

Office of Public Utility Counsel 2010 Annual Report



For the

Senate Business and Commerce Committee

Senate Finance Committee

House State Affairs Committee

House Appropriations Committee

Sunset Advisory Commission

January 2011



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Public Counsel

January 11, 2011

Honorable Members:

The Office of Public Utility Counsel (OPUC) is pleased to submit our *2010 Annual Report* as required by the Public Utility Regulatory Act Section 13.063. This report provides you and your staff a look at our agency's advocacy efforts for residential and small business customers of electric and telephone utilities during 2010. Below is a snapshot of our accomplishments this past year:

- OPUC achieved \$188 million in bill savings through consumer representation in 58 contested cases and appeals during Fiscal Year 2010;
- OPUC advocated in 65 electric and telephone rulemakings ensuring certain customer protections were in place;
- OPUC conducted twenty-two outreach events visiting over fourteen Texas communities, including multiple visits to the Houston and Dallas-Fort Worth area;
- OPUC's website averaged over 900 visitors per month with over 2,000 average page views per month;
- OPUC has received over 300 calls solely to its toll-free number since its inception in December 2009;
- OPUC launched a new website, a new quarterly newsletter, and now utilizes social media to provide pertinent consumer information; and
- OPUC addressed inquiries and complaints from over 200 Texans and continues to assist customers with their issues.

As required by statute, the report provides an overview of our office's types of activities, the time spent on each activity, the number of hours billed for representing consumers in proceedings, the number of staff positions and type of work performed by each, and the office's rate of success in appeals. In addition to highlighting some of the contested cases and rulemakings, the report summarizes OPUC's contributions at ERCOT, provides an overview of the Texas electric market as it affects consumers, highlights emerging issues, and provides legislative recommendations for your consideration.

OPUC appreciates this opportunity to provide you and your staff with information about our consumer advocacy. If you have any questions about any issues addressed in this report, please contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheri Givens".

Sheri Givens
Public Counsel

ACKNOWLEDGEMENTS

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2010 OPUC Annual Report

Table of Contents

Chapter 1. Overview	1
A. OPUC Activities	1
B. OPUC Hours Billed.....	2
C. OPUC Staff Positions and Type of Work Performed	3
 Chapter 2. Summary of OPUC Activities for 2010.....	 4
A. Contested Proceedings	4
1. Electric.....	4
a. Traditional Rate Cases.....	4
b. Advanced Metering	5
2. Telecommunications	5
B. Rulemaking Activities and Projects	5
1. Electric.....	6
a. Customers	6
i. Meter-Tampering.....	6
ii. Deferred Payment Plans and Disconnection of Electric Service	6
iii. Critical Care Electric Customers.....	7
iv. AMS Low-Income In-home Devices	7
b. Utilities	8
i. Interim Transmission Cost of Service	8
ii. Transmission Cost Recovery Factor.....	9
iii. Distribution Costs of Service	9
iv. Non-Wind Renewable Goal	10
v. Energy Efficiency.....	11
2. Telecommunications	11
a. Specialized Telecommunications Assistance Program	11
b. Automatic Dial Announcing Devices.....	12
c. Federal Communications Commission	12
C. ERCOT Participation	13
1. ERCOT and Texas RE Board of Directors	13
2. Technical Advisory Committee and Subcommittees	14
3. Wholesale Market Subcommittee, Retail Market Subcommittee and Protocol Revisions Subcommittee	14
4. OPUC Accomplishments	14
D. Customer Outreach	16
1. Education and Information.....	16
2. Annual Meeting.....	17

2010 OPUC Annual Report

Table of Contents

Chapter 3. The Texas Competitive Electric Market and Its Effects on Consumers.....	18
A. Electric Competition and Customer Choice.....	18
B. Challenges Facing the Competitive Electric Market.....	19
C. New Nodal Wholesale Electric Market.....	20
D. Current Economic Climate Effects on the Competitive Market and Consumers ...	20
Chapter 4. Emerging Issues	22
A. 2009 Emerging Issue Update	22
B. 2010 Emerging Issues	22
Chapter 5. Legislative Recommendations	24
A. 2009 Recommendations and Outcomes	24
B. 2010 Legislative Recommendations	24
Attachments.....	30
A. FY 2010 Cases and Projects in Which OPUC Participated	
B. FY 2010 Appeals Report	
C. <i>Texas Register</i> Notice for OPUC's Annual Meeting in Killeen, TX	
D. OPUC Outreach Events for Dec. 2009 - Dec. 2010	
E. OPUC Organizational Chart	
F. Alternative Ratemaking	
G. Line-Item Surcharges and Riders	
H. Customer Charges	
I. Prepaid Electricity	
J. Electric Vehicles	
K. Switch Hold	
L. Acronyms	

Chapter 1. Overview

In 1983, the Office of Public Utility Counsel (OPUC or agency) was created as part of the 68th Legislature's Sunset Review of the Public Utility Commission (PUC or Commission). The agency was created in response to legislative and consumer concerns that residential and small business ratepayers were not being adequately represented in utility proceedings that ultimately affected them. Utility companies and large consumers had significant resources to aggressively present their positions. In contrast, residential and small business ratepayers generally did not have representation in matters coming before the PUC and other agencies, because they were individually unable to afford the cost of presenting full legal cases. The Legislature determined that this inequity created an imbalance in the regulatory process; therefore, OPUC was created to provide balance to the process.¹

By statute, OPUC is required to provide an annual report on the agency's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over OPUC.² The report must include:

- the types of activities conducted by OPUC and time spent by OPUC on each activity;
- the number of hours billed by OPUC representing residential or small commercial customers in proceedings;
- the number of staff positions and type of work performed by each position; and
- OPUC's rate of success in representing residential and small commercial customers in appealing Commission decisions.³

In addition, OPUC is authorized to recommend legislation to the Legislature that the agency determines would positively affect the interests of residential and small commercial customers.⁴ For more information, see Chapter 5, *Legislative Recommendations*.

A. OPUC Activities

The Public Utility Regulatory Act (PURA) charges OPUC with representing residential and small business consumers in proceedings affecting electric and telecommunications rates and services.⁵ OPUC represents these consumers at the PUC, as well as in both state and federal courts, at the Federal Communications Commission (FCC) and at the Federal Energy Regulatory Commission (FERC). Following are the types of activities conducted by OPUC in 2010:

- **Contested Cases and Appeals.** In contested cases and appeals, OPUC provides legal and technical comments, testimony, and proposals that benefit residential and small commercial customers and promote their interests. Through OPUC's advocacy in both state and federal cases and appeals, OPUC participated in 58 contested proceedings and appeals and helped consumers realize over \$188 million in bill savings during Fiscal Year (FY) 2010. For more information, see Chapter 2A, *Contested Proceedings*.
- **Rulemakings and Projects.** In rulemakings and projects, OPUC also provides legal and technical comments and proposals to benefit and promote its consumers' interests. OPUC

participated in 65 projects in FY 2010, 36 electric and 29 telecommunications. For more information, see Chapter 2B, *Rulemaking Activities and Projects*.

- **ERCOT and Texas RE.** Additionally, OPUC is an active participant at the Electric Reliability Council of Texas (ERCOT), which is the Independent System Operator (ISO) for 75 percent of the Texas electric grid, and ERCOT committees and working groups. OPUC likewise participates at the Texas Reliability Entity (Texas RE), which is responsible for ensuring compliance with the North American Reliability Corporation (NERC) reliability standards within the geographic boundaries of the ERCOT region. Decisions made at regulatory agencies, ERCOT and Texas RE directly impact the price, offering, and reliability of utility services. OPUC represents the interests of residential and small business consumers when those decisions are being formed and made. For more information, see Chapter 2C, *ERCOT Participation*.
- **Outreach.** OPUC proactively seeks to bring value to its representation of residential and small business consumers by pursuing a variety of outreach opportunities to dialogue with customers about their specific needs and concerns. In 2010, OPUC participated in numerous community outreach events, received hundreds of phone calls via our agency toll-free telephone number, resolved hundreds of customer inquiries and complaints, undertook a significant website redesign, initiated a quarterly agency newsletter, and began utilization of social media, including Facebook and Twitter, to update consumers on relevant information. For more information, see Chapter 2D, *Customer Outreach*.

For a more comprehensive listing of all cases and projects OPUC participated in FY 2010, see Attachment A, *FY 2010 Cases and Projects in Which OPUC Participated*.⁶

B. OPUC Hours Billed

OPUC's workload is categorized by electric and telecommunications cases, projects, and appeals. In FY 2010, OPUC staff spent 10,927.5 hours on electric and telecommunications cases; 8,829.5 hours on electric and telecommunications projects; and 488.0 hours on appeals. Total OPUC staff hours in FY 2010 were 20,245.⁷

	Total Electric and Telecom Cases	Total Electric and Telecom Projects	Total Electric and Telecom Appeals	Total Electric and Telecom Hours
OPUC Staff	50	65	8	20,245.0

During FY 2010, OPUC was involved in pending appeals relating to eight PUC decisions.⁸

	FY 2008	FY 2009	FY 2010
Appeals OPUC participated in	11	7	8

For a more comprehensive analysis of OPUC's appeals during FY 2010, see Attachment B, *FY 2010 Appeals Report*.

C. OPUC Staff Positions and Type of Work Performed

OPUC is headed by the Public Counsel, who is appointed by the Governor and confirmed by the Senate for a two-year term.⁹ The Public Counsel must be licensed to practice law in the state of Texas and must be a Texas resident.¹⁰ The eighth and current Public Counsel is Sheri Givens, first appointed by Governor Rick Perry on December 21, 2009.

The Public Counsel supervises the overall operations of the agency and establishes agency policy. Specifically, the Public Counsel is responsible for the agency budget, staff hiring and termination, agency policy and administration, and the selection of cases in which to intervene.

OPUC has a total number of 17.5 employees and consists of two main divisions, the Litigation Division and the Market Representation and Communications Division, and also includes a Business Manager and support staff.¹¹ This two-division structure was initiated in 2008 and has allowed OPUC to better deploy its professional, legal, and technical expertise within the appropriate regulatory or market venue.

- **Litigation.** The Litigation Division is responsible for representing the interests of residential and small business consumers in litigated matters before the PUC and other jurisdictional entities as necessary (*i.e.*, state and federal courts, FERC, FCC, etc.). Major regulatory matters include, but are not limited to, rate cases, fuel reconciliation and other fuel cases, energy efficiency cost recovery factor cases, and advanced metering deployment and surcharge proceedings. In addition to the Director, who is an attorney, the Division also employs two additional attorneys and three regulatory analysts.
- **Market Representation and Communications.** The Market Representation and Communications Division is responsible for representing the interests of residential and small business consumers in non-litigated matters, rulemakings, and projects, and advocates for residential and small business consumers before the PUC, the Texas Legislature, ERCOT, and other jurisdictional entities. Market Representation projects include, but are not limited to, customer protection, utility cost recovery, and retail electric provider rules; advanced metering matters; agency annual meetings and reports; customer complaint resolution; legislative bill review, analysis, and advocacy; and public communication, education, and outreach. In addition to the Director, the division also employs three attorneys and one information specialist.
- **Business Manager and Support Staff.** OPUC's Business Manager, and 4.5 administrative support staff complete the 17.5 filled full-time and part-time positions.¹² The Business Manager manages the budget and business activities, while the administrative support staff provides professional, legal, and clerical support for all groups.

The OPUC staff comprises 13 professional positions requiring an advanced degree and extensive experience in utility regulatory and market issues.

Chapter 2. Summary of OPUC Activities for 2010

A. Contested Proceedings

For FY 2010, OPUC participated in 45 contested electric cases – 5 contested telecommunications cases, and 8 appeals. The agency reported \$188,586,924 of current year bill savings for residential and small commercial customers as a result of those proceedings. The agency participated in a variety of cases including traditional rate cases, the continued implementation of advanced metering, and energy efficiency cost recovery. For more information, see Attachment A, *FY 2010 Cases and Projects in Which OPUC Participated*.

1. Electric

The agency continues to experience an increase in rate setting and rate recovery cases. A significant portion of the agency's resources have been devoted to establishing reasonable rates for integrated utilities in regulated areas, as well as unbundled transmission and distribution utilities in competitive areas. As discussed more fully in this chapter, electric utilities continue to propose novel rate recovery mechanisms in response to current economic conditions. Many of these mechanisms would allow the utility to recover significant costs in issue-specific proceedings, without first determining the utility's overall costs. For example, utilities have proposed unique recovery of transmission costs, distribution costs, and purchased power costs, which may end up as surcharges or line items on consumers' bills. In FY 2010, the agency opposed requests by utilities for lost revenue adjustment mechanisms (LRAMs) which would guarantee a level of revenue for the utility under certain conditions, such as the implementation of energy efficiency programs, because these requests were unrelated to actual expenses of the utility.

a. Traditional Rate Cases

FY 2010 saw an increase in the number of traditional rate cases filed at the PUC. As in the previous year, economic conditions spurred many utilities to ask the PUC for a review of their rates. Both choice (unbundled) and non-choice (bundled) utilities filed rate proceedings in FY 2010, and OPUC participated in rate cases filed by the following utilities: Oncor Electric Delivery Company, LLC (Oncor),¹³ Southwestern Electric Power Company (SWEPCO),¹⁴ El Paso Electric Company (El Paso),¹⁵ Entergy Texas, Inc. (ETI),¹⁶ Southwestern Public Service Company (SPS),¹⁷ CenterPoint Energy Houston Electric (CenterPoint),¹⁸ and Texas New Mexico Power Company (TNMP).¹⁹

A tremendous amount of the agency's resources are devoted to negotiating and litigating these massive rate cases. These rate cases typically involve issues relating to a company's return on equity, costs of service, taxes, affiliate transactions, rate of return, and cost allocation among diverse customer classes. Each issue might involve expert testimony from accountants, engineers, economists or industry experts. OPUC's efforts in negotiating and litigating these rate cases have resulted in lowering costs to residential and small business customers by approximately \$188 million. OPUC anticipates several new rate cases to be filed in FY 2011.

b. Advanced Metering

In 2005, the Legislature amended the PURA to encourage the deployment of advanced metering systems (AMS).²⁰ The PUC amended its rules to address the legislative requirements for the deployment of advanced metering.²¹ Since the passage of the advanced metering legislation, the PUC has approved deployment plans for the three largest investor owned utilities in ERCOT – Oncor,²² CenterPoint,²³ and American Electric Power (AEP) Texas North and Texas Central Companies.²⁴ These companies are currently in the process of deploying approximately 6.3 million meters throughout their respective service territories.

The benefits of advanced metering, or smart meters, include improvement of reliability and grid restoration; market-based demand response; enhancement in service for customers, including a real-time tool for managing consumption of electricity; and reduction or elimination in prices for discretionary services, such as reconnection fees.

During FY 2010, the Commission approved AEP's AMS deployment plans.²⁵ As a result, advanced meters will be ubiquitously deployed throughout both AEP Texas Central and Texas North's service territories. In addition, the deployment will coincide with a comprehensive customer education program, and free in-home devices will be made available to eligible low-income customers. OPUC was a strong proponent of these value-added services.

In May 2010, TNMP filed a request for approval of AMS deployment and a surcharge.²⁶ That case is currently pending before the Commission.

2. Telecommunications

For FY 2010, OPUC participated in five telecommunications cases involving the implementation of changes related to the Texas High Cost Universal Service Plan (THCUSP), as a result of a related settlement proceeding.²⁷ The PUC order, relating to the unanimous settlement agreement, provides that increases in basic residential rates as a result of each telecommunication utility's filing are offset by an additional 25 percent of the increase actually approved by the PUC. In FY 2010, OPUC participated in each telecommunications case to ensure that all eligible low-income customers received the additional support agreed to by the parties and ordered by the PUC, and reviewed each utility's filing to make sure each had limited its requested increase to no more than the maximum amount pursuant to that settlement agreement. Each application to change rates was approved by the PUC in December 2009.

B. Rulemaking Activities and Projects

For FY 2010, OPUC participated in 65 projects and rulemakings – 36 electric and 29 telecommunications. The agency participated and advocated for its consumers in several customer protection rulemakings (i.e., meter tampering, payment plans, critical care customer designations), an AMS in-home device distribution project, energy efficiency and non-wind renewable rulemakings, telecommunications rulemakings at the Commission-level (i.e., STAP

and ADAD), and an FCC proceeding relating to net neutrality. For more information, see Attachment A, *FY 2010 Cases and Projects in Which OPUC Participated*.

1. Electric

a. Customers

Several major projects were opened by the Commission during 2010 that affect residential and/or small business electric customers and certain protections afforded to them.

i. Meter-Tampering

In July 2009, the Commission opened PUC Project No. 37291 to address an issue that had arisen with the deployment of advanced meters.²⁸ As several utilities, or transmission and distribution service providers (TDSPs), removed the old analog meters and replaced them with the new digital meters, or smart meters, they found that some of the analog meters had been tampered with. The utilities then billed the retail electric providers (REPs) for past electric usage that was not recorded due to the tampering. The REPs, in turn, reported having very little success at recovering those costs from customers that might not have been with the REP at the time the bill from the utility came.

In December 2009, the PUC issued a Proposal for Publication.²⁹ The proposed rule included a provision to prevent a customer that has tampered with the meter from switching to a new REP until the charges related to the tampering are paid in full to the current REP (essentially, a “switch block” or “switch hold” on the customer). The proposed rule also addressed the manner in which the TDSPs should collect and present evidence of meter tampering to the accused customer and the ability of the TDSP to backbill, or seek unrecovered charges due to the customer’s meter tampering, from the REP.

In January 2010, through joint written comments with State Representative Sylvester Turner, OPUC expressed its objection to restricting a customer’s choice in selecting a REP and questioned the Commission’s statutory authority to provide for a switch hold.³⁰ OPUC also noted its concerns regarding the collection and presentment of evidence by the TDSPs to the customers.³¹

The rule was adopted in April 2010. The rule provides parameters for the TDSPs to follow in its collection of evidence and the timeframe in which it can backbill. The rule also includes an allowance for a customer switch hold which OPUC and consumer groups opposed. For more information, see Chapter 5, *Legislative Recommendations*, relating to switch hold.

ii. Deferred Payment Plans and Disconnection of Electric Service

In September 2008, the Commission initiated PUC Project No. 36131, relating to the disconnection of service and deferred payment plans.³² Initially, the project was opened in response to perennial consumer petitions being filed with the Commission for a moratorium on summer disconnections.

The project was inactive until August 2009, at which time the PUC held an initial workshop to hear market participants' concerns. OPUC attended the workshop and expressed its concerns through written comments regarding the availability of deferred and levelized bill payment plans to all customers and the non-uniform standards used by the TDSPs in their critical care designation procedures.³³ OPUC filed multiple comments in the project and participated in ongoing meetings with the Commission and stakeholders.³⁴ The critical care portion of this rulemaking was severed and placed in a new project, PUC Project No. 37622 (see below).

The PUC revised the rule regarding the availability of levelized, average, and deferred bill payment plans. As in the meter tampering rule, OPUC and other consumer advocates opposed a proposed switch hold prohibiting a customer from switching away from their current REP if that customer owed the REP an outstanding balance; however, the PUC included the switch-hold provision in the final rule.³⁵

The rules were adopted in September 2010. The rule regarding the disconnection of service becomes effective in January 2011, and the rule regarding the availability of deferred and levelized bill payment plans, along with the switch hold, becomes effective in June 2011.

iii. Critical Care Electric Customers

In November 2009, the Commission opened PUC Project No. 37622 to sever critical care customer issues from pending PUC Project No. 36131, relating to deferred payment plans (see above). The goal of the project was to ensure all TDSPs treated critical care electric customer designations with the same, uniform criteria.³⁶ Through the project, the Commission and stakeholders learned that an electric customer with a particular medical condition might receive a critical care designation in one TDSP service territory; however, they might not receive such a designation in another.³⁷ OPUC filed written comments in May 2010 and participated in numerous meetings with stakeholders and the Commission.³⁸

The Commission adopted the new rule in September 2010. OPUC and other consumer advocates were successful in ensuring that the TDSPs provide uniform standards for the designation of critical care customers. Pursuant to the new rule, the TDSPs now must also recognize, and provide certain protections, to a new category of customers with potential life-long illnesses, chronic care customers.³⁹

iv. AMS Low-Income In-home Devices

As part of the TDSPs' AMS deployment plans, the TDSPs agreed to provide a combined total of \$18.5 million for the funding and distribution of in-home devices to eligible low-income customers with advanced meters in each of the TDSP service territories.⁴⁰ An in-home device syncs with a customer's smart meter on the outside of their home, enabling the customer to see in real time their electricity consumption and costs inside their home.

The Commission established PUC Project No. 36234 to facilitate workshops where stakeholders could design a program to meet the Commission's expectations.⁴¹ As expressed in

the Final Order of the Oncor AMS Stipulation in PUC Docket No. 35718, the goal of the workshops and resulting program “is to maximize the comprehensive, cost-effective distribution of the in-home devices, including training and education, to the greatest number of eligible low-income customers.”⁴²

OPUC asserts in-home devices will be a critical component of the advanced metering landscape and will enable customers, especially our State’s most income-sensitive customers, to make informed decisions regarding their electricity usage. It is OPUC’s goal to have a useful in-home device provided to as many eligible low-income homes as possible.

In May 2010, the utilities issued a joint request for vendors to provide the in-home devices.⁴³ The responses to the request did not meet the expectations of the stakeholders and Commission Staff, and accordingly, the utilities, OPUC, and Commission Staff decided to abate the proceeding until the in-home device market advances.⁴⁴

b. Utilities

In 2010, the Commission considered several important electric utility cost recovery rulemakings that could pass certain additional costs to end-use customers, including residential and small commercial consumers.

i. Interim Transmission Cost of Service

Utilities that build transmission lines that deliver electricity from generation sources for long distances regularly seek incremental transmission cost recovery associated with building those lines from ratepayers in annual, interim transmission cost of service (TCOS) proceedings filed at the PUC; however, a new Commission rule now allows for such recovery through a bi-annual, interim basis.

In February 2010, the PUC proposed an amendment to its electric substantive rule, Section 25.192, relating to transmission service rates, in PUC Project No. 37519.⁴⁵ OPUC filed comments and reply comments in March 2010.

The proposed amendment increased from once to twice per year the number of times a transmission service provider (TSP) may file for an interim update to its transmission rates to reflect changes in the level of investment in transmission facilities. The amendment also limited the number of times a TSP may update its rates on an interim basis before being required to file a complete rate case and authorized the Commission to consider, in the TSP’s next complete rate case, the effects of these interim updates on the TSP’s rates and the associated impact on the TSP’s financial risk and rate of return.

OPUC and other consumer advocates filed comments reflecting their contention that this rule was unnecessary and not in the public interest because there was no justification for the “need” for such an allowance or demonstration of significant financial harm to the utility without such an allowance. The rule, as it existed prior to this rulemaking, was adequate. However, the PUC concluded that providing TSPs with the opportunity for twice-per-year interim TCOS filings

fulfilled two important policy objectives: (1) allowing for timely recovery of investments related to expansion in ERCOT's transmission infrastructure; and (2) providing for the implementation of ratemaking mechanisms pursuant to the provisions of PURA Section 35.004(d) regarding periodic adjustments of wholesale rates. The final rule was adopted in August 2010.

ii. Transmission Cost Recovery Factor

The transmission cost recovery factor (TCRF) is a PUC-established regulatory mechanism that allows a distribution service provider (DSP), a utility that builds distribution lines that step-down electricity from long-distance transmission lines to end-use customers, to seek recovery of certain increases in transmission costs passed on to them periodically by TSPs as a result of a TSP's rate cases and interim updates. A DSP under the old rule updated its TCRF twice per year, March 1 and September 1; however, a new Commission rule now allows for such recovery to go into effect upon the filing of the request, much sooner than under the old rule.

In April 2010, the PUC proposed an amendment to its electric substantive rule, Section 25.193, relating to a DSP's TCRF, in PUC Project No. 37909.⁴⁶ OPUC participated in this project and filed comments and reply comments in May and June of 2010 respectively.

The proposed PUC amendments allowed a DSP to reflect in its rates an adjustment that reconciles the difference between: (1) the transmission costs that are paid by the DSP but not included in its base rates; and (2) the revenues recovered through the DSP's TCRF.

OPUC contended that the TCRF mechanism available to DSPs under the existing rule is more than sufficient to allow "timely" recovery of wholesale transmission costs, as envisioned by PURA Section 35.004(d), and OPUC's comments and reply comments supported this position. However, the Commission determined that DSPs serve as billing and collection agents for passed-through TCRF costs, and, under the PUC's current rules, have no ability to avoid such costs or address and manage the time lag that exists with respect to recovering these costs. This aspect distinguishes a DSP's TCRF costs from the DSP's costs recovered through base rates. The PUC additionally agreed that, because of expected investment in Competitive Renewable Energy Zone (CREZ) facilities, passed-through transmission costs to DSPs will likely increase over the next several years, thereby exacerbating the amount of losses currently borne by DSPs for services they do not provide and over which they have no control.

The PUC's adoption of the rule allows DSPs to recover the additional transmission costs flowed through by TSPs. The final rule was adopted in October 2010.

iii. Distribution Costs of Service

While interim TCOS and TCRF mechanisms allow for the recovery of transmission costs in excess of those costs established in electric utility base rate cases, no similar mechanism exists for the recovery of capital investments in distribution infrastructure. Recovery of costs related to distribution infrastructure capital investments and related depreciation expense and taxes is currently restricted to traditional rate proceedings.

In June 2010, the PUC proposed a new electric substantive rule, Section 25.243, to allow electric utilities that provide retail electric service using distribution facilities to apply for and update a distribution cost recovery factor (DCRF) to reflect changes in invested capital for their distribution facilities and associated costs in PUC Project No. 38298.⁴⁷ OPUC filed comments and reply comments in this proceeding in July and August 2010 respectively.

The overarching issue in this rulemaking was whether the PUC had the authority to adopt a rule that permits electric utilities to periodically adjust their rates outside of a full, traditional rate proceeding to account for a discrete set of costs, such as additional investment in the utility's distribution infrastructure or distribution operation and maintenance expense.

Under PURA as it is currently written, OPUC contends that the PUC does not have the general authority to permit an electric utility to adjust its rates outside of a full, traditional rate proceeding to account for a discrete set of costs. No provision in PURA, either explicitly or implicitly, grants any such general authority to the PUC. Instead, PURA reflects the traditional prohibition against what is referred to as "piecemeal ratemaking." To the extent the Commission believes there is merit in implementing the goals of the proposed new Section 25.243, OPUC contends that new legislation amending PURA is necessary.

At its December 16, 2010 Open Meeting, the PUC decided to not move forward with this rulemaking to allow the Legislature an opportunity to address the issue in the upcoming legislative session.

iv. Non-Wind Renewable Goal

During the 80th Legislative Session, PURA Section 39.904(a) was revised to permit industrial customers to opt-out of the renewable energy program and to permit the PUC to establish an alternative compliance payment (ACP) in order to further the target of 500 megawatts (MW) of capacity from renewable energy technologies other than wind energy.⁴⁸

In July 2008, in response to that legislation, the PUC opened PUC Project No. 35792 requesting comments regarding the establishment and implementation of a 500 MW non-wind renewable target.⁴⁹ The project was dormant until December 2009, at which time Commission Staff issued a Strawman Rule for comment.⁵⁰ OPUC filed comments in February 2010 and participated in a hearing regarding the non-wind rule in June 2010.⁵¹ OPUC's primary concern is that the proposed rule includes technology-specific mandates that could increase the costs of electricity to consumers. OPUC believes that incentives are a more prudent and less costly option that will fulfill the objective of the statute.

The Commission approved a proposal for publication for comment in December 2010. Pursuant to the Commission's discussion of the rule at its December 16, 2010 Open Meeting, OPUC expects a final rule to be published in July 2011 if no legislative action is taken in the upcoming legislative session.

v. Energy Efficiency

Under Senate Bill 7 that restructured the Texas electric market in 1999, electric utilities, or TDSPs, were given goals to meet to control their load growth through energy efficiency programs.⁵² The TDSPs administer the programs by paying energy efficiency service providers (EESPs) an incentive to install energy efficiency measures at end-use customer properties. The amount of incentive payment is determined by the TDSPs based on the expected energy and demand savings of the measure that is installed.⁵³ Other than measures installed at customer sites that qualify as hard-to-reach (at or below 200% of the federal poverty guidelines), the incentive that the TDSPs pay the EESPs does not fully compensate the EESPs for the measure; therefore, the end-use customer must also pay the EESP for the energy efficiency measure.

During the 2007 Legislative Session, House Bill 3693 was adopted which provided for a utility cost recovery mechanism as well as a bonus for TDSPs that exceed their energy efficiency goals.⁵⁴ Since then, the PUC has approved an energy efficiency cost recovery factor (EECRF) for the TDSPs to collect their costs incurred as administrators of the programs and a bonus for the TDSPs that exceed their statutory goals. As a result of the implementation of the EECRF, TDSPs now collect their costs through a rider that is passed through to the REPs, rather than through base rates.

In November 2009, the PUC initiated a project to revise the rule relating to the TDSPs' energy efficiency programs. The PUC proposed to increase the energy efficiency goals, bonuses, and budgets of the TDSPs for the energy efficiency programs.⁵⁵ OPUC filed written comments expressing the agency's support of energy efficiency in general but also noting concerns regarding the cost of the programs and the financial burden that the programs place on residential and small commercial customers.⁵⁶ In reply comments, OPUC responded to several TDSP comments that requested that the rule include a lost revenue adjustment mechanism (LRAM).⁵⁷ As discussed earlier in this report, LRAM would guarantee a level of revenue for the utility under certain conditions, such as the implementation of energy efficiency programs; however, OPUC opposes LRAM because these requests are unrelated to actual expenses of the utility. OPUC explained through reply comments that the Commission does not have statutory authority to provide lost revenue recovery. OPUC also made recommendations regarding the proposed energy efficiency goals and TDSP bonuses that were included in the Commission's Proposal for Publication.

The final rule was adopted in August 2010 and did not include a LRAM; however, the energy efficiency goals for the TDSPs were increased as were the TDSP program budgets and bonuses.⁵⁸

2. Telecommunications

a. Specialized Telecommunications Assistance Program

The PUC issued a Proposal for Publication in March 2010 to amend the rule relating to the Specialized Telecommunications Assistance Program (STAP).⁵⁹ The STAP is a state-wide program that provides financial assistance for the purchase of specialized assistive equipment or

services for Texans having a disability that interferes with their ability to access the telephone network. OPUC filed comments in May 2010 reiterating its support of the proposed rule amendments, noting that they clarify the responsibilities of the Commission and enhance the requirements for vendors and service providers participating in the STAP. Specifically, OPUC stated that the proposed rule revisions increase oversight, accountability, and transparency, while ensuring consumers receive quality devices at a fair market price. The final rule was approved in July 2010.

b. Automatic Dial Announcing Devices

The PUC established a rulemaking project in May 2010 pertaining to the investigation of issues relating to automatic dial announcing devices (ADAD).⁶⁰ ADAD is the mechanism that sends an unsolicited recorded message to a home or workplace and could leave such a message on an answering machine or voicemail. The Commission has not yet issued a proposed rule, but OPUC anticipates potential consumer impacts and possible issues related to network stability, public safety issues, and the need for software-based ADAD systems to be compatible with the network and have built-in protections in the event of a malfunction.

c. Federal Communications Commission

The restructuring of the telecommunications industry has shifted the regulatory focus from the state PUC venue to the Federal Communications Commission (FCC) arena. OPUC maintains its voice on behalf of Texas residential and small commercial customers in the FCC proceedings by filings its own comments and in partnering with the National Association of State Utility Consumer Advocates (NASUCA) in its efforts. NASUCA is a national association established in 1979, currently comprised of 44 consumer advocates in 40 states, including OPUC in Texas, and the District of Columbia that advocates on utility issues at the federal level.

The three most consumer-impacting telecommunications issues at the federal level prevalent in FY 2010, and currently being addressed by the FCC, are the FCC's National Broadband Plan,⁶¹ multiple proceedings related to transformation of the Universal Service Fund (USF), and network neutrality.⁶² Network neutrality is the concept that companies providing Internet service should treat all sources of data equally. Debate has centered over whether those companies can give preferential treatment to content providers who pay for faster transmission, or to their own content, thus effectively creating a two-tier web, and whether companies can block certain content representing controversial points of view.

While OPUC partners with NASUCA in monitoring all of the referenced FCC national issues, the agency also often files comments separate from NASUCA to represent the specific interests and concerns of Texas residential and small commercial customers. In particular, OPUC filed initial comments in January 2010 in the aforementioned network neutrality proceeding, wherein OPUC urged the FCC to prevent governmental or regulatory action from unintentionally interfering with innovation and customer access to services and products that markets are better equipped to promulgate. OPUC advised the FCC to proceed cautiously and identify gaps in existing laws that already provide appropriate protection to prevent deceptive, misleading, unfair, or anti-competitive practices.⁶³

On December 21, 2010, the FCC adopted an order addressing new Net Neutrality rules, voted on 3 to 2, which require Internet Service Providers to be transparent in their network management practices, prohibit the blocking of any lawful application or service, and prohibit the discrimination against the provision of different types of traffic. Appeals of these new rules are expected in the coming months.

C. ERCOT Participation

ERCOT is one of 10 regional reliability councils in NERC, and the ERCOT ISO is the independent, not-for-profit organization responsible for the reliable transmission of electricity across Texas' interconnected, 37,000-mile power grid. ERCOT's primary role since 1970 has been to ensure the coordination of electricity transmission reliability and electric power transfers among NERC member organizations. Pursuant to Texas' deregulation of the wholesale generation market in 1995, and later with the creation of a competitive retail electricity market in 1999, ERCOT's role has expanded significantly. ERCOT now provides structure and oversight of the market design and activities of the energy market, including power scheduling, power operations, and retail market data transactions between retailers and wires companies.

In addition, pursuant to the Energy Policy Act of 2005 (EPAAct), NERC mandated the creation of a regional entity to perform the functions described by EPAAct.⁶⁴ Accordingly, the Texas RE is authorized by NERC to develop, monitor, assess, and enforce compliance with NERC reliability standards within the geographic boundaries of the ERCOT region.

OPUC has been an active participant in the market design stakeholder process since the inception of electric restructuring, and continued to do so in 2010 by collaborating with the various market participants within the committee and sub-committee structure to bring value to the process on behalf of its constituents, residential and small commercial customers.

1. ERCOT and Texas RE Board of Directors

The agency's Public Counsel statutorily serves as a member of the ERCOT Board of Directors.⁶⁵ The ERCOT Board of Directors has monthly open meetings and consists of 15 members: independent members (unaffiliated with the power industry); consumers; and representatives from industry market segments.

The Public Counsel also serves as an ex-officio, non-voting member of the Texas RE Board which oversees the Texas RE's compliance and reliability oversight. The Texas RE's functions and protocol compliance were previously performed by the Texas *Regional* Entity, as a functionally independent division of ERCOT. The Texas *Reliability* Entity took over all responsibilities of the Texas *Regional* Entity on July 1, 2010 as the successor regional entity for the ERCOT region.

2. Technical Advisory Committee and Subcommittees

An appointee of the Public Counsel and the Director of Market Representation are members of ERCOT's Technical Advisory Committee (TAC). TAC comprises market stakeholders and makes recommendations to the ERCOT Board of Directors. It is assisted by five subcommittees: Retail Market Subcommittee (RMS); Wholesale Market Subcommittee (WMS); Reliability and Operations Subcommittee (ROS); Commercial Operations Subcommittee (COPS); and Protocol Revisions Subcommittee (PRS). Consumers are represented on all committees, which meet monthly. Numerous task forces and working groups reporting to these major subcommittees also meet regularly. TAC makes recommendations to the Board regarding ERCOT policies and procedures and is responsible for prioritizing projects through the protocol revision request, system change request, and guide revision processes.

3. Wholesale Market Subcommittee, Retail Market Subcommittee and Protocol Revisions Subcommittee

OPUC Market Representation personnel also serve as members of the following TAC subcommittees: WMS, RMS, and PRS. WMS reviews issues related to the operation of the wholesale market in the ERCOT region and makes recommendations for improvement. RMS serves as a forum for issue resolution in regards to retail market matters directly affecting ERCOT and ERCOT protocols. RMS also monitors PUC filings as they apply to the retail markets and participants ensuring the PUC requirements are reflected in the Retail Market Guides, protocols, and Texas Standard Electronic Transaction (Texas SET), the retail commercial operations system utilized to support the Texas Electric Choice market. PRS is responsible for reviewing and recommending action on formally submitted procedures and processes used by ERCOT and market participants, Protocol Revision Requests (PRRs) and Nodal Protocol Revision Requests (NPRRs). As these major committees and subcommittees promulgate the need for related working groups or task forces, OPUC members participate in those meetings as well.

4. OPUC Accomplishments

Noteworthy ERCOT accomplishments and highlights for FY 2010, having the most impact for OPUC's constituents include the following:

- **Nodal Advisory Task Force.** A Nodal Advisory Task Force (NATF), comprising market stakeholders from all segments, was formed in 2009 to work with the ERCOT Nodal Project Team (Nodal Team) tasked with bringing nodal market design, a new wholesale market redesign initiated by the PUC to better manage transmission congestion and provide day-ahead market services, be within budget and on time. The "go-live" date for the new nodal market structure was targeted for and achieved on December 1, 2010, without incident. The NATF aggressively met in 2010 to prioritize and address all market issues to ensure a timely transition and a successful meeting of the December 1st goal. The NATF will continue to meet in 2011 to address post "go-live" transition issues. Reporting to the TAC, the NATF responds to requests for market participant input from the Nodal Team. The NATF also assists the TAC subcommittees in transitioning to the nodal environment, evaluates market

participant readiness metrics and scorecards, and assists ERCOT in developing and reviewing its internal business processes and procedures. The NATF is further charged with ensuring consistency between the nodal protocols and system design. It must also ensure that market participants' interface software and ERCOT systems operate within the intent of the nodal protocols. OPUC's Director of Market Representation and a Market Representation alternate serve on this task force, which meets monthly.

- **Special Nodal Program Committee.** A Special Nodal Program Committee of the ERCOT Board of Directors, which includes OPUC's Public Counsel, was also created in 2009, and OPUC's Public Counsel was an active participant in all Nodal Program Committee meetings in 2010. This committee assists and advises the Board with respect to oversight of the Nodal Market Implementation Program (Nodal Program); reviews and makes final recommendations to the Board pertaining to the Nodal Program budget, schedule and scope; reviews Nodal Program and ERCOT Staff strategy and policy decisions; reviews the status of and activities undertaken as part of the Nodal Program with the Program Director and/or his subordinate staff; reviews the performance and findings of and confers with the independent Nodal Program Review consultant; in conjunction with the Finance and Audit Committee, the Committee recommends, and reviews the results of internal and external audits of the Nodal Program; and performs such other duties and responsibilities as necessary.
- **Wind Generation Integration.** As noted in OPUC's *2009 Annual Report*, one of the more significant issues facing ERCOT, the PUC, and market participants is the integration of approximately 18.5 gigawatts of new wind generation into the existing grid to accommodate Texas' growing electricity demand. The wind integration issue was no less noteworthy in 2010, and pursuant to its participation in the ERCOT Board, TAC, and TAC Subcommittee structure, OPUC has been an active advocate for consumers in the development and adoption of PRRs and NPRRs pertaining to a multitude of wind integration issues.
- **ERCOT Meeting Broadcasting on the Internet.** House Bill 1783 required the PUC and ERCOT to make their live public meetings available online without charge. OPUC and ERCOT were the only two entities commenting on a Commission-proposed rule to establish the requirements for the free Internet broadcasting of meetings pursuant to new PURA Section 39.1511(c).⁶⁶ In particular, the proposed rule defines public meetings as meetings of the governing body of ERCOT and meetings of any committee or subcommittee of the governing body of ERCOT, excluding the meetings of the Texas RE. OPUC contended in its comments that the language in the proposed Commission rule reflected the intent of the legislation and limited the public meetings to be broadcast to those of the ERCOT Board, the two major Board committees (the Human Resources and Governance Committee and the Finance and Audit Committee), the TAC, and the five TAC subcommittees (WMS, RMS, PRS, COPS, and ROS). ERCOT disagreed with OPUC's conclusions and stated that ERCOT Board members do not currently serve as members of TAC or TAC subcommittees and are not expected to do so in the future; therefore, broadcasting requirements should not apply to TAC or its subcommittees. ERCOT also noted that the revisions to the ERCOT bylaws prohibiting membership of ERCOT Board members on the TAC or its subcommittees have been approved by ERCOT's Corporate Members. Accordingly, the Commission declined to adopt OPUC's recommendation, noting that there was no statutory requirement

that the broadcasting requirements of the rule apply to TAC or any of its subcommittees. The final rule was adopted in January 2010.

D. Customer Outreach

1. Education and Information

*The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public and appropriate state agencies.*⁶⁷

OPUC, as the sole state agency tasked with representing residential and small business consumers, is well positioned to inform, assist, and protect consumers with regards to issues and policies pertaining to and services available from telecommunications and electric utility providers. OPUC informs consumers with personalized, customer service catering to customers' specific needs and concerns, focusing on issues where informational gaps exist and where consumers are especially vulnerable. Noteworthy outreach efforts and highlights for 2010, having the most impact for OPUC's constituents include the following:

- **Toll-Free Telephone Number.** As noted in OPUC's 2009 Annual Report, in response to the public input from OPUC's community outreach events, OPUC, in December 2009, established a toll-free telephone number (877-839-0363) for Texas consumers to call the agency with inquiries and complaints. OPUC has received over 300 calls on its toll-free number since its inception in December 2009.
- **Community Outreach Events.** From December 2009 through December 2010, OPUC participated in approximately 25 community outreach events in 14 Texas cities, partnering with the PUC, legislative offices and staff, city clubs, non-profit organizations, social service organizations, and market participants to inform and educate consumers and organizations representing consumers.⁶⁸ OPUC used these outreach opportunities to establish a two-way dialogue with consumers on the following issues: low-income and bill payment assistance; energy efficiency improvements and assistance; shopping for a retail electric provider; PUC rule changes impacting customers; and smart meter deployment and education. OPUC provides attendees hand-outs with community-specific assistance information, information about the agency, and "customer cards," business cards imprinted with each method of contacting OPUC, including its toll-free number.
- **Website and Social Media.** Also in 2010, OPUC undertook a website redesign to improve navigation, appearance, and accessibility to all users, in an effort to improve customer satisfaction and input, making OPUC's operations and information more transparent and available to the public. OPUC continues to update and utilize its website to ensure a more consumer-relevant and consumer-informative resource. The OPUC website is and will continue to be an effective resource to consumers, providing important information regarding communications, electric industry services and contact information, energy-saving guidelines, financial and critical/chronic care customer assistance, complaint-filing processes, and updates on regulatory and market developments impacting consumers.

Information relating to PUC rule changes, legislation, and docketed proceedings affecting consumers are additional resources that will be incorporated into the agency's website and issued as "Consumer Alerts," to which consumers can subscribe via email. Since August 2010, when OPUC began tracking visitors to its website, there have been 3,271 total visitors (averaging 930 total monthly visitors), 2,158 unique or new visitors (averaging 539 total monthly unique visitors), and 8,467 page views (averaging 2,116 monthly page views). Internet traffic on OPUC's website has increased each month. OPUC also recently began utilizing social media, including Facebook and Twitter, to update consumers on important information.

- **Newsletter.** Beginning in June 2010, OPUC launched a new education and information tool, an agency newsletter. Consumers can sign up through the OPUC website to receive the quarterly letter via email. Each newsletter includes timely, consumer-relevant information relating to the PUC, ERCOT or Texas RE updates; customer protection; PUC rule updates; energy efficiency tips, programs, and assistance; low-income assistance; electric choice; legislative updates; smart meter deployment and education; and customer outreach event dates and contact information for event requests.
- **Complaints and Inquiries.** OPUC receives numerous complaints and inquiries each year, and 2010 was no exception. OPUC's professional staff members worked with customers to assist them to better understand and resolve the relevant issues and concerns they brought to the agency. Customer issues and inquiries included the following: billing and customer service; provision of service; disconnection and payment assistance; utility bills charges and unauthorized charges (cramming); and switching providers and unauthorized switching of providers (slamming). OPUC received and resolved a total of 212 complaints/inquiries in FY 2010.

2. Annual Meeting

The office shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers an opportunity to comment on the office's functions and effectiveness.⁶⁹

Since 2005, OPUC has held an annual meeting to reach out to residential and small business customers to assist in formulating the goals, priorities, and functions of the agency. OPUC held its annual meeting in Killeen, Texas on November 12, 2010.⁷⁰ The agency coordinated the event with the Killeen Heights Rotary Club, and listened to the area residents concerns, including the need for access to a PUC-approved standard electricity plan from each REP and prorated early termination fees for consumer-REP contracts based on length of time the customer had stayed with the REP. These two concerns are further addressed in Chapter 5, *Legislative Recommendations*. OPUC provided consumer surveys to those attending to seek additional input on electric and communications priorities and concerns. To date, the Killeen Annual Meeting was the best attended of any OPUC Annual Meeting with approximately 100 people in attendance.

Chapter 3. The Texas Competitive Electric Market and Its Effects on Consumers

A. Electric Competition and Customer Choice

Consistent with what OPUC reported in the *2009 Annual Report*, the electric market in the ERCOT region continues its transition and maturation from a fully regulated structure to one where the production and sale of electricity is subject to competitive market forces, while the transmission and distribution of electricity remains fully regulated by the PUC.⁷¹ The Commission continues to regulate TDU rates and services in Texas but exercises limited authority over generators and sellers of electricity in ERCOT.

Prior to 2002, Texas residential and small commercial consumers had no choice in their electric service. Beginning in 2002, retail electric competition replaced traditional monopoly utility service in ERCOT. In those areas of the state open to retail competition, residential and small commercial customers could choose the company, REP, providing electricity to their homes and businesses for the first time.⁷² As of May 2010, 53 percent of residential load and 80 percent of small commercial load have switched to competitive retailers.⁷³ Competition is similarly strong in the retail electric market. The average Texan in ERCOT can choose from 138 different plans offered by 29 different providers, an increase from five providers offering eight plans in 2002.

Electricity pricing plans include fixed, variable and indexed electricity rates. A fixed electricity rate will generally remain the same throughout the term of a contract (with minor exceptions). A variable electricity rate can go up or down each month according to a method chosen by the REP. An indexed rate is tied to a specific pricing formula disclosed by the REP. If a consumer chooses a plan with a long contract period and a fixed rate, the customer will have certainty that the price will not change during that time. While this may help household budgeting, if market prices fall, the customer may have to wait until the contract expires to enjoy a lower price. Variable and indexed rate plans can provide the benefit of an immediate pass-through of falling market prices but will also rise if natural gas and electricity prices spike due to natural disasters, cold winters, or market conditions.

Consumers also have choice in the type of generation used to produce the electricity. If a consumer wants a plan that is renewable, the customer can check the provider's Electricity Facts Label to see how much of the plan's electricity is generated from renewable resources – wind, solar, hydroelectric, geothermal, landfill gas, or biomass. REPs are also allowed to designate products that use electricity generated by natural gas, a relatively clean fuel, as “green.”⁷⁴

In 2010, through outreach and education in over 25 cities around the state, OPUC communicated with consumers information specific to their geography relating to up-to-date kilowatt-hour (kWh) pricing information for their area, available electric plans and terms, items to be aware of and consider before choosing a new REP, and other pertinent electric choice information.

B. Challenges Facing the Competitive Electric Market

Below is an overview of some of the current challenges OPUC perceives in the State's competitive electric market:

- **Alternative Ratemaking.** Recent rulemakings highlight the tension between traditional ratemaking and the competitive market. The traditional ratemaking paradigm places the risk of fluctuations in electricity sales and the cost of providing service on the utility; in turn, the utility is allowed to earn a return commensurate with this risk. The current economic environment is one of weak load growth and increased costs. Utilities have responded to these unfavorable conditions by supporting alternative rate designs which recover a subset of costs outside of base rates. These mechanisms allow the utility to recover cost increases more quickly and completely and without the full review of costs and revenues that is part of a traditional rate case.⁷⁵ A portion of a utility's business risk is shifted to ratepayers, and the utility's incentive to constrain costs is diminished as a result. In this environment, it becomes increasingly important to explore a new approach to ratemaking that supports the financial health of utilities and ensures cost-effective investment in infrastructure, yet also provides incentives for a utility to constrain costs for ratepayers' benefit. For more information, see Attachment F, *Alternative Ratemaking*.
- **New Generation Integration.** As new generation sources are planned to accommodate future electricity demand, Texas faces the challenge of integrating more and even newer technology into the existing grid. Integration may call for infrastructure upgrades or the need for increased reserve capacity. For example, the addition of wind as a resource in Texas has resulted in the need for additional transmission capacity and ancillary services. In a series of projects the PUC established, among other things, competitive renewable energy zones (CREZ), which are designed to ensure the electricity produced from wind turbines in West Texas can be delivered to customer load in the East, such as the Dallas-Fort Worth area.⁷⁶ Such costs must be included when evaluating new technology, so the balance between cost-effective and environmentally friendly generation can be made to benefit consumers. The CREZ projects involve the installation of over 2,300 miles of 345 kilovolt transmission lines at a cost of nearly \$5 billion.⁷⁷ These projects have been assigned to various transmission service providers; each provider must apply to the Commission for a new or amended certificate of convenience and necessity (CCN) to construct a line on a specified route. Because of the effects a potential route can have on landowners, the natural landscape, and the ultimate cost of a project to consumers, the CCN proceedings have involved many intervenors.⁷⁸ The infrastructure investment represented by the CREZ proceedings requires that these often disparate interests be balanced within the constraints created by the Legislature and the need for safe, reliable service.
- **Advanced Meter Deployment.** Advanced meter technology has been described as a technology that supports the competitive market. Electric service can be connected and disconnected remotely, restored more quickly in the event of an outage, and managed more effectively by consumers given the increased consumption information provided by advanced meters. While the benefits of advanced meters have been widely communicated, installation of the meters sparked consumer backlash during the winter months of late 2009 and early

2010. Some consumers with advanced meters reported higher bills after installation of the meters and claimed that the meters were inaccurate. Utilities pointed to the colder than usual winter weather. Several legislators called for a moratorium on advanced meter installation pending verification of the meters' accuracy. In response, the PUC hired a third party to test the accuracy of a sample of meters - of the 5,627 meters tested, 99.96% were accurate within appropriate technical standards.⁷⁹

- **Storm Hardening.** Weather events in the Gulf Coast region have hastened the need to improve the reliability of the electric transmission and distribution systems. One method for improving reliability currently being investigated by the PUC is one of burying lines or replacing wooden poles with metal or concrete—a process called “hardening.” The benefits of hardening, including the potential for fewer outages or outages of shorter duration, must be weighed against the cost of such projects to determine to what degree, if any, the grid should be hardened. The PUC has begun to take an active role in the resolution of these issues. For example, in July 2010, the PUC adopted an electric substantive rule, Section 25.95, that requires an electric utility to develop a storm hardening plan for a five-year planning period beginning January 1, 2011. A summary of the plan must be filed by May 1, 2011 with summaries of material revisions to the plan and the progress in implementing the plan are due by May 1 of each subsequent year.⁸⁰

C. New Nodal Wholesale Electric Market

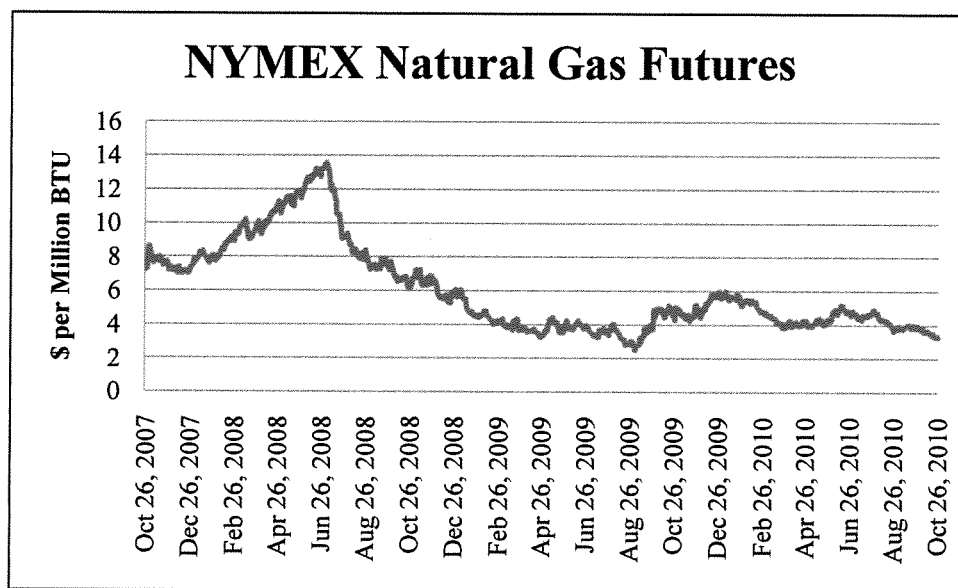
In a move to increase the transparency of prices and thereby increase market efficiency, the PUC ordered ERCOT to move from a zonal wholesale electric market design to a nodal design. Prior to December 1, 2010, the electric grid was divided into four congestion management zones with grid resources grouped on a portfolio basis within these zones providing zone-based, rather than resource-based, prices. Since December 1, 2010, with the launch of the new nodal wholesale electric market, the grid now constitutes over 4,000 nodes with market prices available at each node. With this resource-level degree of price transparency, resources can be dispatched more effectively, at lower cost, and prices will reflect the true marginal cost by location. The overall result is a better matching of grid generation resources with electricity load demands. In the long run, nodal is expected to result in lower wholesale prices than zonal. As with most markets, the supply and demand of electricity is more sensitive to prices in the long run than in the short run, because there are more supply-side and demand-side opportunities in the long run to respond to price changes with capital investment and conservation. In the short run, customers have fewer options for dealing with price changes; therefore, in areas where nodal prices rise to signal the need for additional resources, customer education is needed to minimize the impact on customers' electricity bills.

D. Current Economic Climate Effects on the Competitive Market and Consumers

As OPUC has noted in previous annual reports, increased competition moves the market to an efficient outcome by matching electricity demand with the lowest cost producers of electricity. The mix of generation sources (e.g., coal, nuclear, natural gas, wind, etc.) in a REP's total energy portfolio drives its cost of providing electricity to customers. Because REPs generally obtain a larger percentage of their electricity from sources fueled by natural gas, in

comparison to electric cooperatives and municipalities, customers who purchase electricity through REPs have seen more price volatility in the last several years as a result of underlying volatility in natural gas prices.

Gas prices have been relatively stable in the past year and are far below the prices observed during the 2008 price spike. The moderation in gas prices has resulted in lower retail electric prices. A comparison of natural gas prices from October 2007 to October 2010 and REP price information from the same period confirms the link between natural gas prices and retail electric prices.⁸¹



Lowest 12-Month Fixed-Rate Retail Electricity Offer by Service Territory						
<i>Wires Co.</i>	<i>Oct 2008 (¢/kWh)⁸²</i>	<i>REP</i>	<i>Sep 2009 (¢/kWh)⁸³</i>	<i>REP</i>	<i>Oct 2010 (¢/kWh)⁸⁴</i>	<i>REP</i>
AEP Central	12.8	Amigo	10.6	Champion	9.1	Mega
AEP North	10.6	Champion	9.6	Champion	8.4	Amigo
TNMP	12.0	Dynowatt	10.0	Kinetic	8.5	Southwest P&L
CenterPoint	12.6	StarTex	10.5	Southwest P&L	8.9	TriEagle
Oncor	11.6	Simple Power	9.6	Champion	8.2	TriEagle

Tight credit markets have affected the providers of electric generation, TDUs, and REPs in Texas, which has a direct effect on customers. Since new capital and capital improvements are largely funded by debt financing, limited credit availability has led to construction delays. Construction costs, however, have moderated since the highs reached in 2008. While costs for

certain commodities, like copper and steel, have recently increased, reductions in electricity consumption and construction activity have helped to offset higher commodity costs.⁸⁵

Current economic and market conditions continue to provide challenges to the increased product choice and lower prices promised by competition. In light of such challenges, the consumer advocacy role taken by OPUC becomes increasingly important.

Chapter 4. Emerging Issues

A. 2009 Emerging Issue Update

In OPUC's *2009 Annual Report*, we highlighted the following four emerging issues: which remain at the forefront of this year's discussions:

- **Continued Smart Meter Grid Deployment.** Advanced meter system (AMS) deployment applications for CenterPoint, Oncor, AEP Texas North and Texas Central have been approved by the PUC. Texas New Mexico Power Company's AMS application, for 240,000 advanced meters, is currently pending with the Commission.⁸⁶ Of the over 6 million total advanced meters anticipated to be deployed pursuant to the respective AMS plans, over 2.5 million have been deployed to date by CenterPoint, Oncor, and the two AEP companies.⁸⁷ A web tool was launched in March 2010 for consumers, REPs, and TDUs to track and manage energy use (www.SmartMeterTexas.com). OPUC and market participants continue to collaborate to address remaining issues related to the provision of in-home devices for monitoring and managing energy use, continued consumer education, and low-income assistance.
- **Wind Integration.** The integration of approximately 18.5 gigawatts of new wind generation into the existing transmission grid continues to be a significant issue. This issue is further highlighted in portions of Chapters 2 and 3 of this report.
- **Alternative Ratemaking Efforts.** This particular issue picked up momentum in 2010, and this report highlights three related PUC rulemaking projects in Chapter 2. We address this issue once again in more detail in this chapter.
- **"Switch-Hold" / "Hard Disconnect."** Pursuant to Commission decisions made in 2010 relating to this critical consumer issue, OPUC addresses this particular issue in Chapter 5, *Legislative Recommendations*.

B. 2010 Emerging Issues

In addition to the four continuing issues mentioned above, OPUC highlights the following three emerging issues for 2010 which may have a potential significant financial impact on residential and small business customers:

- **Electric Cost Recovery Issues.** Utilities have voiced their requests for a variety of unique cost/revenue recovery mechanisms in the past year. These new mechanisms come under a variety of names, but for simplicity, OPUC will focus on the following three terms: alternative ratemaking; line-item surcharges and riders; and customer charges.
 - ***Alternative Ratemaking.*** Under traditional ratemaking law, an electric utility may not adjust its rates outside of a full, traditional rate proceeding. However, because of various cost recovery issues related to the challenges of regulated utilities operating in the restructured, competitive market, utilities have been exploring ways of recovering cost increases outside of the traditional ratemaking paradigm. Because these cost increases eventually flow to end-use consumers, OPUC continues to be actively involved with this issue. For more information, see Attachment F, *Alternative Ratemaking*.
 - ***Line-Item Surcharges and Riders.*** Although surcharges are not a new issue, the recent trend in rates has been to take more and more costs out of a utility's base rates and place them in line-item surcharges. Because these riders or surcharges are additional charges over and above those collected in base rates, OPUC remains concerned with this trend and advocates on behalf of residential and small business customers for their protection. For more information, see Attachment G, *Line-Item Surcharges and Riders*.
 - ***Customer Charges.*** Utilities have recently been proposing increases in fixed customer charges as a way for them to provide more predictable and stable revenue. These fixed customer charges have traditionally been designed to only cover the revenue requirement necessary to cover billing, metering, and customer service costs, and has never been intended to include utility fixed costs. OPUC believes this trend is regressive and detrimental to consumers. For more information, see Attachment H, *Customer Charges*.
- **Prepaid Electric Service.** With the proliferation of advanced meter systems throughout the state, the prepaid market will undoubtedly expand. While prepaid service may offer benefits to many consumers, such as complete elimination of utility bills, check overdraft charges, deposits, late payment fees, interest charges and disconnect/reconnect charges, such advantages must be weighed against the potential of being disconnected and potential health hazards for those in need of electricity for the essentials of life via heat, water, air conditioning and communications. Ensuring that appropriate customer protections are in place is fundamental to the customer's realization of prepaid product's benefits. Equally important is ensuring energy service is available to financially-challenged consumers and avoiding unfair or punitive disconnections or discriminatory pricing. For more information, see Attachment I, *Prepaid Electric Service*.
- **Electric Vehicles.** In early 2010, the Commission opened a project to explore the issues created by the impending introduction of electric vehicles (EVs) into the consumer marketplace. OPUC anticipates significant consumer impacts relating to this issue, including

appropriate standards for the use of EVs, cost increases, environmental impacts, and reliability concerns. For more information, see Attachment I, *Electric Vehicles*.

Chapter 5. Legislative Recommendations

Pursuant to the PURA Section 13.003(a)(8), OPUC “may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.” Below is a summary of OPUC’s outcomes from recommendations made in 2009 and new recommendations for 2010.

A. 2009 Recommendations and Outcomes

Last year, OPUC recommended legislation related to the restoration of the System Benefit Fund (SBF), the potential for OPUC to enhance its advocacy role as an ombudsman, and the expansion of OPUC’s representation of residential and small business customers to water and natural gas proceedings before the Texas Commission on Environmental Quality (TCEQ) and the Texas Railroad Commission (RRC) respectively. While there were no bills that ultimately passed relating to OPUC’s recommendations, the restoration of the SBF was a recurrent issue in proposed legislation before the 81st Legislature, and OPUC anticipates the issue to be raised in the upcoming legislative session as well.

OPUC’s recommendations regarding its ombudsman role and extended consumer representation in water and natural gas proceedings were included in its Sunset Advisory Commission Self-Evaluation Report. In July 2010, the Sunset Commission adopted Sunset Staff’s recommendation to continue the agency for 12 more years. Additionally, during the TCEQ review, Sunset Advisory Commission Staff recommended water advocacy be transferred to OPUC, and during public testimony hearings in December 2010. No objections to these were made by agencies, the public or the Sunset Advisory Commission. Final Sunset Recommendations are expected during the upcoming legislative session.

B. 2010 Legislative Recommendations

During 2010, several legislative issues came to OPUC’s attention through participation in the sunset process, PUC rulemakings, review of pertinent consumer information, and various public outreach events. Below is a list of OPUC’s legislative recommendations for the 82nd Legislature to consider:

- **Sunset.** The Sunset Advisory Commission adopted Sunset Advisory Commission Staff’s recommendation 1.1, to continue OPUC for 12 years.⁸⁸ In addition, no objections were raised to the Sunset Commission Staff’s recommendation S 1.6, requiring OPUC to represent residential and small commercial interests relating to water and wastewater utilities, contingent upon water and wastewater ratemaking being transferred from TCEQ to the PUC.⁸⁹ In fact, the PUC, TCEQ, and consumer groups supported this staff recommendation.⁹⁰ OPUC supports the Sunset Advisory Commission’s decisions to continue the agency for 12 more years and to require OPUC representation of consumer interests in water and wastewater proceedings.

- **Switch Hold.** In 2010, two PUC rulemakings added a switch hold provision prohibiting customers from switching away from their REP if that customer owes the REP an outstanding balance.⁹¹ OPUC believes the switch hold provision may drastically change the customer experience in ERCOT. Once the new provision goes into effect in June 2011, if a customer does not pay his/her bill, the customer will be disconnected and then denied from choosing a new REP until the bill with the current REP is paid in full. While this may seem reasonable to some at first glance, OPUC is concerned that customers may be disconnected for extended periods of time. With so many customers on fixed or low-incomes, the ability to maintain electric service may be a bigger challenge than ever. OPUC recommends the Legislature take serious note of this critical consumer issue and the PUC's decision and prohibit REPs from retaining customers who would like to choose a new provider. For more information, see Attachment I, *Switch Hold*.
- **Power to Choose Website.** During outreach events, consumers voiced questions relating to pricing on the Power to Choose website, and after agency review of the website, OPUC agrees that price transparency could be improved. By allowing customers to report their average monthly usage amount and sort on average prices computed for their individual usage, customers could get a better idea in advance of what their monthly electricity might cost. For example, an advertised 10 cent per kWh rate may be available for an average 1,000 kWh per month customer's household; however, the customer's household may utilize, on average, less than 1,000 kWh per month potentially making their average rate higher, or vice-versa, a customer's household utilizing more electricity on average, such as 2,000 kWh per month, might have a lower kWh rate. Though the customer's rate range based on usage might be provided in the REP's Electricity Facts Label, providing consumers with an option to sort electricity prices based on their actual monthly usage might give consumers a better understanding of what their end-of-the-month electricity bill will actually cost them. Likewise, information about contract terms that can affect the price per kilowatt hour, such as monthly minimum usage charges ranging from \$4.95 to \$9.95 per month in addition to the per kWh rate, could be included in the fields that appear when consumers view offers on the website, potentially a new "Special Terms" field. The Legislature should require that offers presented on Power to Choose include all pertinent charges, including charges that are based on usage requirements based on applicable usage tiers and any minimum usages charges.
- **Early Termination Fees.** Under the current rule, if a customer leaves a REP before the expiration of the contract term, the REP may charge a fee for early termination of the contract. REPs argue that the early termination fees compensate them for energy that they have purchased for that customer pursuant to the contract. OPUC believes that these early termination fees, that can be as high as \$250, are often a barrier to customers' switching providers, and that tailoring the fees to more accurately reflect the amount of energy that may have been purchased for the customer by the REP will reduce the burden on customers. Accordingly, OPUC recommends that the Legislature consider prorating early termination fees based on the number of months remaining on the contract.
- **Standard Electricity Plan.** REPs may have an infinite number of products they offer to consumers, and there are over 100 REPs in the Texas market. That is a substantial number of

contracts for customers to evaluate to decide a REP and/or a product. OPUC believes that residential and small business consumers would greatly benefit from having a “standard” plan or contract, an “apples-to-apples” comparison, allowing them to easily make a decision regarding their electricity. Customers would be able to choose a REP and product based solely on price because under a “standard” plan, all terms would be the same for all REPs, and all of the fees would be rolled into the price of electricity. OPUC recommends that the Legislature consider legislation that provides for all REPs to offer a Commission-approved “standard” electricity plan from each REP where all terms in the contract are identical except for the price which the REPs could set according to their own business models.

¹ For additional information relating to OPUC’s history, please see OPUC’s *Self-Evaluation Report*, September 2009, Section III, pp 16-28, at http://www.opc.state.tx.us/documents/OPUC_SER_FINAL.pdf?ID=90.

² Public Utility Regulatory Act (PURA) §13.063; Texas Utilities Code §13.063.

³ See Attachment B, *FY 2010 Appeals Report*.

⁴ PURA §13.003(a)(8).

⁵ Texas Utilities Code Annotated §§ 13.001 *et seq.* (or Public Utility Regulatory Act (PURA)).

⁶ PURA §13.063(b)(1) requires the OPUC Annual Report to include a list of the types of activities conducted by the office and the time spent by the office on each activity.

⁷ PURA §13.063(b)(2) requires the OPUC Annual Report to include the number of hours billed by the office for representing residential or small commercial customers in proceedings.

⁸ PURA §13.063(b)(4) requires the OPUC Annual Report to include the office’s rate of success in representing residential or small commercial consumers in appealing commission decisions.

⁹ PURA §13.021.

¹⁰ PURA §13.022.

¹¹ PURA §13.063(b)(3) requires the OPUC Annual Report to include the number of staff positions and the type of work performed by each position. See Attachment E, OPUC Organizational Chart.

¹² The 0.5 employee reference represents a part-time administrative support staff position at OPUC.

¹³ PUC Docket No. 35717, *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates* (Nov 30, 2009).

¹⁴ PUC Docket No. 37364, *Application of Southwestern Electric Power Company for Authority to Change Rates* (April 16, 2010).

¹⁵ PUC Docket No. 37690, *Application of El Paso Electric Company Authority to Change Rates, Reconcile Fuel Costs, Establish Formula-Based Fuel Factors, and to Establish an Energy Efficiency Cost Recovery Factor* (July 30, 2010).

¹⁶ PUC Docket No. 37744, *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*.

¹⁷ PUC Docket No. 38147, *Application of Southwestern Public Service Company Authority to Change Rates, to Reconcile Fuel and Purchased Power Costs for 2008 and 2009*.

¹⁸ PUC Docket No. 38339, *Application of CenterPoint Energy Houston Electric LLC for Authority to Change Rates*.

¹⁹ PUC Docket No. 38480, *Application of Texas-New Mexico Power Company for Authority to Change Rates*.

²⁰ Public Utility Regulatory Act (PURA), as amended by HB 2129, 79th Legislature, Regular Session (2005), codified at PURA §39.107(h) and (i).

²¹ PUC SUBST. R. §25.130 (2007).

²² PUC Docket No. 35718 *Oncor Electric Delivery Company LLC's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for Advanced Metering System (AMS) Surcharge*, (2008).

²³ PUC Docket No. 35369, *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System* (2008).

²⁴ PUC Docket No. 36928, *AEP Texas Central Company's and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges*.

²⁵ PUC Docket No. 36928, *AEP Texas Central Company's and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges*.

²⁶ PUC Docket No. 38306, *Texas New-Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment and AMS Surcharge*.

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- ²⁷ PUC Docket No. 34723, *Petition for Review of Monthly per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA §56.031 and Subst. R. 26.403* (April 25, 2008).
- ²⁸ PUC Project No. 37291, *Rulemaking Proceeding Relating to Electric Meter Tampering Issues*.
- ²⁹ PUC Project No. 37291, *Rulemaking Proceeding Relating to Electric Meter Tampering Issues*, Proposal for Publication (December 16, 2009).
- ³⁰ PUC Project No. 37291, *Rulemaking Proceeding Relating to Electric Meter Tampering Issues*, Comments of State Representative Sylvester Turner and Office of Public Utility Counsel (January 22, 2010).
- ³¹ *Id.*
- ³² PUC Project No. 36131, *Rulemaking Relating to the Disconnection of Service and Deferred Payment Plans*.
- ³³ PUC Project No. 36131, *Rulemaking Relating to the Disconnection of Service and Deferred Payment Plans*, Joint Response of Consumers (Oct. 26, 2009).
- ³⁴ PUC Project No. 36131, *Rulemaking Related to Disconnection of Electric Service and Deferred Payment Plan*, Comments of Office of Public Utility Counsel (March 25, May 6, and May 21, 2010).
- ³⁵ PUC Project No. 36131, *Rulemaking Relating to Disconnection of Electric Service and Deferred Payment Plans*, Final Order (September 29, 2010).
- ³⁶ PUC Project No. 37622, *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*.
- ³⁷ PUC Project No. 37622, *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*, Transcript of Open Meeting Workshop (December 3, 2009).
- ³⁸ PUC Project No. 37622, *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*, Comments of Office of Public Utility Counsel (May 6 and May 21, 2010).
- ³⁹ PUC Project No. 37622, *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*, Final Order (September 29, 2010).
- ⁴⁰ PUC Docket No. 35718, *Oncor Electric Delivery Company, LLC's Request for Approval of Advance Metering System (AMS) Deployment Plan and Request for AMS Surcharge*, Final Order at 14, Oncor to provide \$10 million (August 29, 2008); PUC Docket No. 36539, *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System*, Final Order, CenterPoint to provide \$7.5 million (Dec. 22, 2008); PUC Docket No. 36928, *AEP Texas Central Company and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges*, Final Order, AEP Companies to provide \$1 million (Dec. 17, 2009).
- ⁴¹ The workshops to design the program have been held under PUC Project No. 36234, *Oncor Electric Delivery AMS Low-Income Program*. See also <http://www.puc.state.tx.us/electric/projects/36234/36234.cfm>.
- ⁴² PUC Docket No. 35718, *Oncor Electric Delivery Company, LLC's Request for Approval of Advance Metering System (AMS) Deployment Plan and Request for AMS Surcharge*, Final Order at 14 (August 29, 2008).
- ⁴³ See *Id.*
- ⁴⁴ See *Id.*
- ⁴⁵ PUC Project No. 37519, *Rulemaking Proceeding to Amend PUC SUBST. R. §25.192(g), Relating to Transmission Service Rates*.
- ⁴⁶ PUC Project No. 38298, *Rulemaking Related to Recovery by Electric Utilities of Distribution Costs*.
- ⁴⁷ PUC Project No. 38298, *Rulemaking Related to Recovery by Electric Utilities of Distribution Costs*.
- ⁴⁸ HB 1090, 80th Leg., R.S., 2007.
- ⁴⁹ PUC Project No. 35792, *Rulemaking Relating to Goal for Renewable Energy*, (July 28, 2008).
- ⁵⁰ PUC Project No. 35792, *Rulemaking Relating to Goal for Renewable Energy* (December 21, 2009).
- ⁵¹ PUC Project No. 35792, *Rulemaking Relating to Goal for Renewable Energy* (September 15, 2009 and February 12, 2010).
- ⁵² SB 7, 76th Leg., R.S., 1999.
- ⁵³ For example, if insulation is installed at a customer premise, the TDSP will pay the EESP a certain set amount as determined by various factors such as the type of insulation, and the location or weather zone of the premise.
- ⁵⁴ HB 3693, 80th Leg., R.S., 2007. Prior to this amendment, the TDSPs recovered their costs through their base rates.
- ⁵⁵ PUC Project No. 36723, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Proposal for Publication (January 28, 2010).
- ⁵⁶ PUC Project No. 36723, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Comments of Office of Public Utility Counsel (March 15, 2010).

⁵⁷ PUC Project No. 36723, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Reply Comments of Office of Public Utility Counsel (March 29, 2010).

⁵⁸ PUC Project No. 36723, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Final Order (August 9, 2010).

⁵⁹ PUC Project No. 34864, *Rulemaking to Amend PUC Subst. R. §26.415 Relating to the Specialized Telecommunications Assistance Program (STAP)*.

⁶⁰ PUC Project No. 38231, *Investigation of Issues Relating to Automatic Dial Announcing Devices (ADAD)*.

⁶¹ In early 2009, Congress directed the FCC to develop a National Broadband Plan to ensure every American has access to broadband capability. Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband.

⁶² GN Docket No. 09-191, WC Docket No. 07-52, *In the Matter of Preserving the Open Internet Broadband Industry Practices*.

⁶³ See Attachment B for FCC Docket Numbers.

⁶⁴ Energy Policy Act of 2005 (EPAAct), Pub.L. No. 109-58, 119 STAT. 594, effective August 8, 2005.

⁶⁵ PURA §39.151(g)(2).

⁶⁶ HB 1783, 81st, Leg., R.S. (2009); PUC Project No. 37262, *Rulemaking Proceeding Concerning Internet Broadcast of Meetings of the Electric Reliability Council of Texas*.

⁶⁷ PURA §13.061.

⁶⁸ See Attachment D, *OPUC Outreach Events*.

⁶⁹ PURA §13.064.

⁷⁰ See Attachment C, *Texas Register Notice*.

⁷¹ ERCOT encompasses 75% of the Texas land mass and 85% of its electrical load. There are four fully integrated electric utilities in Texas outside of the ERCOT region: El Paso Electric Company; Southwest Public Service Company; Southwestern Electric Power Company; and Entergy Texas, Inc. The PUC fully regulates these entities' Texas operations.

⁷² Incumbent REPs are those providers that were once vertically integrated with fully regulated electric utilities such as TXU (formerly with Oncor) and Reliant (formerly with CenterPoint).

⁷³ The data is from the 2009 ERCOT *Annual Report*.

⁷⁴ See http://www.powertochoose.org/content/compare/understand_your_choices.asp

⁷⁵ See, for example: PUC Docket No. 37909, *Rulemaking Proceeding to Amend PUC Subst. Rule §25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)* and PUC Docket No. 38298, *Rulemaking Related to Recovery by Electric Utilities of Distribution Costs*.

⁷⁶ For example, OPUC participated in PUC Docket No. 33672, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*. In that proceeding OPUC filed testimony and rebuttal testimony regarding how much wind capacity was prudent.

⁷⁷ PUC Chairman Barry T. Smitherman, *The Texas Approach to Achieving Clean Air* (August 24, 2010).

⁷⁸ PUC Staff, *CREZ Update: Progress of Cases to Approve CCNs for CREZ Transmission Projects* (September 29, 2010).

⁷⁹ PUC Project No. 38053, *Smart Meter Testing: Monitoring and Evaluation of Deployment of Advanced Meters*. Evaluation of Advanced Metering System (AMS) Deployment in Texas: Report of Investigation (July 30, 2010).

⁸⁰ PUC Project No. 37475, *Rulemaking for Utility Infrastructure Storm Hardening*.

⁸¹ U.S. Energy Information Administration data released 10/27/2010.

⁸² PUC Commissioner Donna Nelson, *Making the Texas Electric Market Work* (November 14, 2008).

⁸³ PUC Commissioner Donna Nelson, *Market Design 2009: The Texas Competitive Electric Market* (September 17, 2009).

⁸⁴ October 2010 price data is from www.powertochoose.org (November 1, 2010).

⁸⁵ IHS CERA, *Power Plant Construction Costs Rise for First Time Since Q1 2008, But Gain is Limited* (July 15, 2010).

⁸⁶ PUC Docket No. 38306, *Texas-New Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges*.

⁸⁷ Note: CenterPoint, Oncor, and the two AEP companies filed monthly AMS progress reports with the most current deployment numbers through November 2010 in the following PUC Project numbers: Project No. 36157 (Oncor), Project No. 36699 (CenterPoint), and Project No. 37907 (AEP TNC and AEP TCC).

⁸⁸ Sunset Advisory Commission, *Commission Decisions for Public Utility Commission of Texas, Electric Reliability*

Council of Texas and Office of Public Utility Counsel, p. 68-b (July 2010); See http://www.sunset.state.tx.us/82ndreports/puc/puc_dec.pdf.

⁸⁹ Sunset Advisory Commission, *Supplemental Staff Report on the Public Utility Commission of Texas*, Hearing Material, p. 10 (Dec. 2010); See http://www.sunset.state.tx.us/82ndreports/puc/puc_HMsup.pdf.

⁹⁰ *Id.* at 12f-12g.

⁹¹ PUC Project No. 37291, *Rulemaking Relating to Meter Tampering and Disconnection and Reconnection of Service for Customers with Advanced Meters*; PUC Project No. 36131, *Rulemaking Relating to the Disconnection of Service and Deferred Payment Plans*.

Attachments

- A. FY 2010 Cases and Projects in Which OPUC Participated
- B. FY 2010 OPUC Appeals Report
- C. 2010 Texas Register Notice for OPUC Annual Meeting in Killeen, TX
- D. OPUC Outreach Events
- E. OPUC Organizational Chart
- F. Alternative Ratemaking
- G. Line Item Surcharge
- H. Customer Charges
- I. Prepaid Electricity
- J. Electric Vehicles
- K. Switch Hold
- L. Acronyms

Attachment A

FY 2010 Cases and Projects in Which OPUC Participated

Electric Cases

33536	Issues Severed from Docket No. 32758 (Application of AEP Texas Central Company for a Competitive Transition Charge Pursuant to PUC Subst. R. §25.263(n))
34467	Complaint of Texas Electric Cooperative, Inc. Against Entergy Gulf States, Inc. for Violation of PUC Proc. Rules §22.144
35717	Oncor Electric Delivery Company, LLC Application for Authority to Change Rates
36530	Oncor Electric Delivery Company, LLC Application for Rate Case Expenses Pertaining to PUC Docket No. 35717
36851	ERCOT Application for Approval of a Revised Nodal Market Implementation Surcharge
36924	AEP Texas North Company Application to Implement a Mechanism to Address Energy Trading Margins
36928	AEP Texas Central Company's & AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan & Request for AMS Surcharges
36952	CenterPoint Energy Houston Electric, LLC Application to Defer Energy Efficiency Cost Recovery & For Approval of an Energy Efficiency Cost Recovery Factor
36956	Entergy Texas, Inc. Application for Approval to Revise Energy Efficiency Cost Recovery Factor
36958	Oncor Electric Delivery Company Application for 2010 Energy Efficiency Cost Recovery Factor
36959	AEP Texas North Company Application for an Energy Efficiency Cost Recovery Factor & Related Relief
36960	AEP Texas Central Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief
36961	Southwestern Electric Power Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief
37060	Southwestern Public Service Company Application for Approval to Modify Its Fuel Cost Allocation Methodology
37105	CenterPoint Energy Houston Electric Application to Revise Certain Discretionary Charges
37135	Southwestern Public Service Company Application for Approval of a Transmission Cost Recovery Factor
37173	Southwestern Public Service Company Petition for Declaratory Order Regarding The Generation Demand Charge as a cap on Compensation for Interruptible Resources
37247	Entergy Texas Application for a Financing Order

37364	SWEPCO Application for Authority to Change Rates
37482	Entergy Texas Application for Approval of Power Cost Recovery Factor
37565	SWEPCO Application for Declaratory Ruling Approving a Limited Issue Rate Proceeding
37604	AEP Texas Central Company Non-Standard True-Up Filing Pursuant to the Financing Order in Docket No. 21528
37605	SPS' Report on Interim Rates Collected Under Order No. 6 in Docket No. 35763
37690	EPE Application to Change Rates, to Reconcile Fuel Costs, to Establish Formula-Based Fuel Factors, and to Establish An Energy Efficiency Cost Recovery Factor
37742	SPS's Statement of Intent & Application to Revise Its Miscellaneous Service Charges Tariff; Section No. IV
37744	Entergy Texas, Inc. Application for Authority to Change Rates & Reconcile Fuel Costs
37772	SWEPCO Application for Rate Case Expenses Pertaining to PUC Docket No. 37364
37776	Oncor Electric Delivery Company, LLC Interim True-Up Compliance Filing Concerning Rider TC2 Transition Charge
37788	EPE Application to Implement an Interim Fuel Refund
37817	Iberdola Renewables, Inc.'s Appeal & Complaint of ERCOT Decision to Approve PRR 830
37818	Duke Energy's Appeal & Complaint of ERCOT Decision to Approve PRR 830
37819	Nextera Energy Resources, LLC's Appeal & Complaint of ERCOT Decision to Approve PRR 830
37823	Horizon Wind Energy LLC, et al, Appeal & Complaint Concerning The ERCOT Board's Adoption of PRR 830
37824	Res America Developments, Inc., Whirlwind Energy L.L.C., & Hackberry L.L.C.'s Appeal & Complaint of ERCOT Decision to Approve PRR 830
37827	Buffalo Gap Wind Farm, LLC, Buffalo Gap Wind Farm 2, LLC & Buffalo Gap Wind Farm 3, LLC's Appeal & Complaint of ERCOT's Decision to Approve PRR 830
37836	CenterPoint Energy Houston Electric, LLC Compliance Filing for a Standard True-Up of Transition Charges Under Schedule TC3
38057	SPS Application for Authority to Revise Fuel Factors Using the Formulae Approved in Docket No. 36712
38098	Entergy Texas, Inc. Application for Authority to Implement New RPCEA Rate
38147	SPS Application for Authority to Change Rates & to Reconcile Fuel & Purchased Power Costs for 2008 & 2009
38213	CenterPoint Energy Houston Electric, LLC Application to Defer Energy Efficiency Cost Recovery & For Approval of an Energy Efficiency Cost Recovery Factor

38306	Texas-New Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment & AMS Surcharge
38339	CenterPoint Energy Houston Electric, LLC Application for Authority to Change Rates
38442	Sharyland Utilities Application for Modification of Orders Regarding Rates
38462	SPS Application for Authority to Revise Its Fuel Factors Using the Formulae Approved in Docket No. 36712
FERC 10-22-000	Tres Amigas LLC Petition for Disclaimer of Jurisdiction

Electric Projects

25721-P	Retail Electric Provider Annual Reports
27647-P	Energy Efficiency Implementation Project
34610-P	Implementation Project Relating to Advanced Metering
35533-P	PUC Rulemaking Proceeding Relating to Prepaid Service
35792-P	Rulemaking Relating to Goal for Renewable Energy
35855-P	Request for Comments on the Use of Demand Ratchets
36131-P	Rulemaking Relating to Disconnection of Electric Service & Deferred Payment Plans
36234-P	Oncor Electric Delivery Low-Income AMS Program
36358-P	Consideration of Alternative Ratemaking Methodologies
36774-P	Project to Track Stimulus Bill Efforts for the American Recovery & Reinvestment Act of 2009
36860-P	Rulemaking Relating to Customer Database of Bill Payment Information
37034-P	Project to Implement Terms of Service & Notification Documents Pursuant to Subst. R. §25.43
37070-P	Rulemaking Proceeding to Adopt Common Terms Used in Billing Telecommunications & Electric Customers
37189-P	Improved Customer Information on Distributed Generation
37214-P	Rulemaking to Implement Changes to Customer Disclosures as Required by HB 1822
37221-P	Petition for Rulemaking to Amend Cost Recovery Rules for Transmission Service Providers in ERCOT
37262-P	Rulemaking Proceeding Concerning Internet Broadcast of Meetings of the ERCOT
37285-P	Plan for Implementing SB 1492 and HB 1831 and Other Legislation Relating to Storm Hardening and Electric Service
37291-P	Rulemaking Proceeding Relating to Electric Meter Tampering Issues
37339-P	Commission Review of Market and Operating Issues Related to Wind Generating Capacity in ERCOT

37519-P	Rulemaking Proceeding to Amend PUC Subst. R. §25.192(G), Relating to Transmission Service Rates
37622-P	Rulemaking Proceeding to Amend Customer Protection Rules Relating to Designation of Critical Care Customers
37623-P	Rulemaking Proceeding to Amend Energy Efficiency
37684-P	Rulemaking Proceeding to Amend Rules Relating to Electric Submetering & Master-Metered Apartment Buildings
37685-P	Rulemaking to Amend Subst. R. §25.107 Regarding Certification of Retail Electric Providers (REPs)
37845-P	Smart Grid Activities
37909-P	Rulemaking Proceeding to Amend PUC Subst. Rule §25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)
38298-P	Rulemaking Related to Recovery by Electric Utilities of Distribution Costs
OPC 02-2	ERCOT Activities
OPC 07-1	OPC's Project Number for Customer Complaints
OPC 09-3	Electric Customer Outreach & External Communications Activities
OPC 09-5	OPC Project Number for Work on the Regulation of Carbon & Carbon Emissions both at the Federal and State Government Levels
OPC 09-6	OPC Project Number for Work on Sunset Review
OPC 10-1	OPC Project Number for Annual Meeting – FY10
OPC 10-2	OPC Project Number for Annual Report – FY10
OPC 10-5	Texas Reliability Entity (Texas RE) Activities

Telephone Cases

- 37665 AT&T Texas Application to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges
- 37679 Windstream Communications Southwest, Inc. Application to Revise Its General Exchange Tariffs No. 1 & No. 2
- 37700 GTE Southwest Incorporated d/b/a Verizon Southwest TXG & TXC Application to Revise Its Local Residential Rates
- 37721 Central Telephone Company of Texas d/b/a Centurylink Application for Basic Service, Rate Changes for Basic Residence Services
- 37722 United Telephone Company of Texas dba Centurylink Application for Basic Service, Rate Changes for Basic Residence Services

Telephone Projects

- 34037-P Activities Related To Oversight Of The 9-1-1 Emergency System
- 34864-P PUC Rulemaking Proceeding to Amend PUC Subst. R. §26.415 Relating to the Specialized Telecommunications Assistance Program (STAP)
- 35495-P PUC Rulemaking Proceeding to Amend Subst. R. §26.127 Regarding 811 Abbreviated Dialing Code
- 36622-P PUC Rulemaking to Amend Tariff Filing Requirements for Telecommunications Utilities
- 36683-P Rulemaking Related to the Revision of PUC Subst. R. §§ 26.417, 26.418 & 26.419 Relating to ETPs, Resale ETPs, & ETCs
- 36899-P Numbering Plan Area Code Relief Planning for the 512 Area Code
- 36900-P Implementation of Area Code Relief for the 512 Area Code
- 37215-P Rulemaking Proceeding to Adopt Common Terms Related to Billing of Telecommunications Services
- 37498-P PUC Rulemaking to Revise the Definition of Access Line and the Categories of Access Lines Pursuant to Local Government Code Chapter 283
- 37502-P PUC Rulemaking Proceeding to Amend PUC Proc R. §22.101 Related to Representative Appearances
- 37614-P PUC Rulemaking Related to the Regulatory Treatment of Voice Over Internet Protocol Services
- 37688-P PUC Petition of Rulemaking Regarding 811 Abbreviated Dialing Code
- 38047-P Rulemaking Relating to 9-1-1
- 38231-P Investigation of Issues Relating to Automatic Dial Announcing Devices (ADAD)

OPC 09-4	Telephone Customer Outreach & External Communications Activities
OPC 10-4	OPC's Strategic Plan
FCC WT 99-217	Promotion of Competitive Markets in Local Telecommunications Markets
FCC 05-33	Unified Intercarrier Compensation Regime
CC 01-92	
DA 06-1510	
FCC 05-55	Truth-In-Billing
CC 98-170	
CC 04-208	
FCC 05-78	BellSouth Telecommunications Request for Declaratory Ruling
WC 03-251	Regarding Broadband Internet Access Services
FCC 07-164	Service Rules for Advanced Wireless Services in the 2155-2175 MHz
WT 07-195	Band
FCC 08-4	Identical Support/High-Cost Universal Service Support & Federal
WC 05-337	State Joint Board on Universal Service
CC 96-45	
FCC 08-5	Reverse Auctions/High-Cost Universal Service Support & Federal
WC 05-337	State Joint Board on Universal Service
CC 96-45	
FCC 08-22	Joint Board Comprehensive Reform/High-Cost Universal Service
WC 05-337	Support & Federal State Joint Board on Universal Service
CC 96-45	
FCC 08-152	AT&T Petition for Interim Declaratory Ruling & Limited Waivers
DA 08-1725	Regarding Access Charges and the "ESP" Exemption
FCC 08-203	In the Matter of Service Quality, Customer Satisfaction,
WC 08-190	Infrastructure & Operating Data Gathering
FCC 08-262	FCC Order on Remand & Report & Order & Further Notice of
WC 05-337	Proposed Rulemaking Requesting Comments on Three Proposals to
CC 96-45	Reform Intercarrier Compensation & High-Cost Universal Service
WC 03-100	Support
WC 06-122	
CC 99-200	
CC 96-98	
CC 01-92	
CC 99-68	
WC 04-36	
FCC 09-68	FCC Matter of Consumer Information and Disclosure; Truth-in-
CG 09-158	Billing; and Billing Format IP-Enabled Services
CC 98-170	
WC 04-36	
FCC GN 09-191	FCC Matter of Preserving the Open Internet and Broadband Industry
WC 07-52	Practices

Attachment B

FISCAL YEAR 2010 APPEALS REPORT

For Fiscal Year (FY) 2010, OPUC participated in 8 appeals. A description of the procedural history and dispositions related to each of OPUC's appeals, by court, can be found in the chart to this attachment.

Appellate Process in the Administrative Law Context

Unlike most civil cases, the appellate process for most cases arising from a decision by the PUC begins with judicial review in the Travis County District Court before going on to the intermediate Court of Appeals or the state's Supreme Court. Direct Appeal and Petition for Writ of Mandamus may allow parties to "skip" one or more appellate levels but such cases are in the minority. The district court serves a valuable function in the administrative appellate process, because it is at this level that the multiple issues on appeal are refined before continuing in the process. A funneling effect also occurs in that many cases are resolved in the district court in such a way that parties decide to cease pursuit of the appeal at a higher level. More administrative law appeals are heard at the district court than the Texas Court of Appeals and Texas Supreme Court combined.

During FY 2010, OPUC was involved in pending appeals related to eight PUC decisions. Of those appeals, three have progressed to the Texas Supreme Court level while two others have progressed as far as the Court of Appeals. The remaining three have not progressed past judicial review in the Travis County District Courts by fiscal year's end. Five of the eight appeals remained pending at fiscal year's end, two at the Texas Supreme Court and three in the Travis County District Court.¹

Appellate Statistics

Determining whether one is successful at the intermediate and high court level requires consideration of many factors. Multiple issues may be presented to the appellate court for review, and parties may find themselves simultaneously defending agency action on some issues and appealing agency actions on other issues. However, the statistics regarding appeals filed in Texas demonstrate that it is generally difficult to overturn decisions. On the Court of Appeals level, only 9.8 percent of the 11,453 cases disposed of in FY 2010 resulted in either a reversal or a mixed disposition. The remainder of cases on appeal at the intermediate level either had decisions which affirmed the decision from the lower court or were dismissed. Likewise, only a small number of cases actually result in reversals or mixed dispositions at the Supreme Court level. Before reviewing a case on its merits, the Supreme Court first decides whether it will even hear the case. The large majority of petitions for review are denied. Initial review was granted in just 97 of the 806 petitions disposed of by the Supreme Court in FY 2010. In FY 2010, the Court disposed of 110 causes in which initial review had been granted, with 7.1 percent of those dispositions affirming the court below.²

Parties' reasons for appealing are not always simply to have the underlying agency decision overturned. Parties may appeal for strategic reasons such as to counterbalance an opponent's appeal of the same decision or to preserve rights while other cases are on appeal. Parties also file appeals for reasons related to settlement negotiations, or to bring issues to light so that they can be more expeditiously addressed in another forum. Because of the complexities that surround the decision to appeal, measuring prevailing dispositions do not always tell the entire story.

¹ PURA §13.063(a)(4) requires the OPUC Annual Report to include the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

² *Office of Court Administration's Annual Statistical Report for the Texas Judiciary* (FY 2010).

FY 2010 APPEALS REPORT
GLOSSARY OF TERMS & REFERENCE SYMBOLS

TERMS

COA	The Third Court of Appeals, Austin, Texas
SCT	The Supreme Court of Texas
STRANDED COSTS	The portion of the book value of a utility's generation assets that is projected to be unrecovered through rates that are based on market prices that the utility had made with the expectation of recovering under the prior rate-regulated regime.

SYMBOLS

+	Denotes consolidated cause number
*	Denotes cause originated by OPUC
‡	Denotes a separate appellate track, such as a mandamus proceeding before the Supreme Court of Texas

**OFFICE OF PUBLIC UTILITY COUNSEL
FY 2010 APPEALS REPORT
AT-A-GLANCE**

PUC NUMBER	SUBJECT	COURT CAUSE NUMBERS	DISPOSITION	STATUS (AS OF 8/31/10)	COMMENTS
26000	Final Fuel Reconciliation- WTU	GN4-04175 COA: 03-05-00644 SCT: 09-1005	Dist. Ct.: Prevail COA: Prevail SCT: n/a	Closed	
29526	True-Up- CenterPoint	GN5-00439+; GV5-00066* GV5-00297* COA: 03-05-00557 ~ SCT: 08-0421 05-0043‡	Dist. Ct.: Mixed Disposition COA: Mixed Disposition ~ SCT: Prevail‡	Pending at SCT	Supreme Court Cause No. 05-0043 is an original mandamus action not associated with the traditional appellate track represented by the other causes filed related to this PUC docket. This mandamus action ended FY 2006 when the SCT dismissed the petition without prejudice. The issues on the traditional appellate track are now pending before the Supreme Court (Review Granted) and awaiting the Court's decision.
31056	True-Up- AEP TCC	D-1-GN- 06-002081* D-1-GV- 06-000827+ COA: 03-07-00196 SCT: 08-0634	Dist. Ct.: Not Prevail COA: Mixed Disposition	Pending at SCT	
32758	Competition Transition Charge – AEP TCC	D-1-GN- 07-001153		Pending at Dist. Ct.	
32795	Stranded Cost Reallocation	D-1-GN- 08-000476 COA: 03-08-00698	Dist. Ct.: Mixed Disposition COA: Mixed Disposition	Closed	

PUC NUMBER	SUBJECT	COURT CAUSE NUMBERS	DISPOSITION	STATUS (AS OF 8/31/10)	COMMENTS
33309	Rate Case – AEP TCC	D-1-GN- 08-001689* D-1-GN-08- 001522+ COA: 03-09-00116	Dist. Ct.: Not Prevail COA: Not Prevail	Closed	
35038	TNMP Compliance Tariff	D-1-GN- 09-000071		Pending at Dist. Ct.	
35717	Rate Case – Oncor	D-1-GN-10- 000448*		Pending at Dist. Ct.	

KEY:

+ denotes consolidated cause number

* denotes cause originated by OPUC

‡ denotes a separate appellate track, such as a mandamus

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 26000
*Application of West Texas Utilities Company for
Authority to Reconcile Fuel Costs*

Status as of 8/31/10:

Closed

Cause Nos.

District Court: GN4-04175

Disposition:

District Court: Prevail

COA: 03-05-00644-CV

COA: Prevail

SCT: 09-1005

SCT: n/a

Details:

In the Third Court of Appeals, OPUC opposed the four issues appealed by AEP Texas North Company (formerly, West Texas Utilities Company) ("AEP TNC"). OPUC defended the Commission's Order on these four issues which included: 1) Whether the Commission properly defined the final fuel reconciliation period for WTU as extending through January 2002; 2) Whether the Commission applied a fuel reconciliation methodology that was consistent with applicable law; 3) Whether it was proper for the Commission to give effect to a five year margins sharing provision from a prior docket's approved settlement agreement; and 4) Whether the Commission properly excluded expenses associated with a load forecast irregularities settlement from WTU's final fuel reconciliation. The Third Court of Appeals affirmed the District Court's judgment affirming the PUC's Final Order in all aspects. Petitions for Review to the Supreme Court of Texas were subsequently denied on February 12, 2010.

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 29526
*Application of CenterPoint Energy Houston
Electric for a True-Up Filing*

Status as of 8/31/10:

Pending at SCT
Mandamus Closed‡

Cause Nos.

District Court: GN5-00439+
GV5-00066*
GN5-00297*

Disposition:

District Court: Mixed Disposition

COA: 03-05-00557-CV

COA: Mixed Disposition

SCT: 08-0421

SCT: n/a

~

~

SCT: 05-0042‡

SCT: Prevail

Details:

The COA upheld the Commission's decision except on two points. First, the Court reversed the PUC's decision, as advocated by OPUC, that CenterPoint's stranded cost amount should not be reduced by the amount of EMCs credited to the AREP for PTB customers. Second, the Court reversed the PUC's decision that CNP was prohibited from recovering interest on EMCs paid to REPs other than the Affiliated REP (affirming the District Court's reversal on this point). This appeal was pending before the Supreme Court of Texas in the 4th Quarter of FY 2010.

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 31056
*Application of AEP Texas Central Company
and CPL Retail Energy, LP to Determine
True-Up Balances Pursuant to PURA § 39.262
and Petition to Determine Amount of Excess
Mitigation Credits to be Refunded and Recovered*

Status as of 8/31/10:

Pending at SCT

Cause Nos.

District Court: D-1-GN-06-02081*
D-1-GV-06-00827+

Disposition:

District Court: Not Prevail

COA: 03-07-00196-CV

COA: Mixed Disposition

SCT: 08-0634

SCT: n/a

Details:

Regarding the Court of Appeals' decision in the appeal of the AEP-TCC true-up case, the COA ruled as follows:

- (1) Reversed the district court and Commission, upholding OPUC's argument that TCC's stranded cost amount should be reduced by the amount of EMCs credited to the AREP for PTB customers. 1 prevail for OPUC; OPUC point of error no. 3.
- (2) Upheld the district court and Commission, overruling OPUC's arguments that the Commission should have used the ECOM model to calculate TCC's stranded cost. 1 not prevail for OPUC; OPUC points of error nos. 1 & 2.

In affirming in part the final order of the Commission in PUC Docket No. 31056, the District Court dismissed each of OPUC's claims of error. The court also reversed in part the Commission's final order and found in the Company's favor that: 1) the PUC erred in making an adjustment to net book value of the South Texas Project and Coletto Creek coal plant because adjustments to market valuation established through a third party transaction are prohibited by PURA § 39.252(d); the PUC erred in applying Rule 25.263 to determine the interest rate on stranded costs because the Supreme Court invalidated the rule; and the Commission abused its discretion in excluding TCC Exhibit No. 28.

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 32758

*Application of AEP Texas Central Company for a
Competitive Transition Charge Pursuant to P.U.C.
Subst. R. 25.263(n)*

Status as of 8/31/10:

Pending at District Court

Cause Nos.

District Court: D-1-GN-07-001153

Disposition:

n/a

Details:

AEP Texas Central Company ("AEP TCC") appealed the PUC's decision. OPUC intervened to defend the PUC Order and to preserve consumer benefits under the Order. AEP TCC filed a Motion to Retain on September 29, 2009, which was granted by the Court. The case remains pending at District Court.

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 32795
Staff's Petition for Reallocation of Stranded Costs
Pursuant to PURA § 39.253(f)

Status as of 8/31/10:

Closed

Cause Nos.

District Court: D-1-GN-08-000476

COA: 03-08-00698-CV

Disposition:

District Court: Mixed Disposition

COA: Mixed Disposition

Details:

The Third Court of Appeals upheld the District Court's Order on the three issues brought before the court. The Court of Appeals affirmed in part and reversed in part the District Court's Order. OPUC prevailed in three issues: 1) Interest should not have been included in the calculation of statewide amount; 2) Up-Front Qualified Costs should not be included; and 3) Interest Rate used in the Order was correct. OPUC did not prevail on three other issues where the Court of Appeals held that: 1) Stranded Costs should have been reduced by the ADFIT amount; 2) Allocation should not have been retroactively reconciled; and 3) Environmental Costs should not be remanded back to the PUC (reversing the District Court's Order).

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 33309

*Application of AEP Texas Central Company
for Authority to Change Rates*

Status as of 8/31/10:

Closed

Cause Nos.

District Court: D-1-GN-08-001689

D-1-GN-08-001522+

Disposition:

Not Prevail

COA: 03-09-00116-CV

COA: Not Prevail

Details:

OPUC advanced one issue to the Third Court of Appeals. OPUC contended that certain merger savings credits and rate reductions riders were erroneously prematurely terminated with the imposition of bonded rates rather than after rates were finally approved by the PUC. The Court of Appeals affirmed the District Court Order affirming the PUC decision.

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 35038

Texas-New Mexico Power Company Tariff

Filing in Compliance with the Final Order

in Docket No. 33106

Status as of 8/31/10:

Pending at District Court

Cause Nos.

District Court: D-1-GN-09-000071

Disposition:

n/a

Details:

Texas-New Mexico Power Company appealed the PUC's decision regarding the actual interest rate to be used in its Competition Transition Charge (CTC). OPUC intervened to defend the PUC Order and to preserve consumer benefits under the Order.

FY 2010 APPEALS REPORT

Appeal from:

PUC Docket No. 35717

Application of Oncor Electric Delivery

Company, LLC for Authority to Change Rates

Status as of 8/31/10:

Pending at District Court

Cause Nos.

District Court: D-1-GN-09-000071

Disposition:

n/a

Details:

OPUC appealed the PUC's decision to not apply the consolidated tax savings adjustment to Oncor which would have resulted in lower rates.

Attachment C

Texas Register Notice for Annual Meeting in Killeen, TX

TEXAS REGISTER

Volume 35 Number 41

October 8, 2010

Pages 9003 – 9166

*Devin McQueen
10th Grade*



D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HIT THE JACKPOT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HIT THE JACKPOT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

Figure 2: GAME NO. 1279 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	403,200	12.50
\$10	470,400	10.71
\$15	201,600	25.00
\$20	235,200	21.43
\$50	67,200	75.00
\$100	35,700	141.18
\$500	2,646	1,904.76
\$2,000	68	74,117.65
\$70,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1279 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1279, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1279. The approximate number and value of prizes in the game are as follows:

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005575
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 27, 2010

Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007 & Supp. 2009) (PURA), the Office of Public Utility Counsel (Office) will conduct its annual public hearing.

The public hearing will be held on the date and time and at the location indicated below.

Friday, November 12, from 7:00 - 9:00 a.m.

Shilo Inn Suites

3701 South W.S. Young Drive

Killeen, Texas 76542

All interested persons are invited to attend and provide input.

The Office represents the interest of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, state and federal courts, and federal regulatory bodies. The Office seeks public input to assist the Office in developing a plan of priorities, and seeks comments on the Office's functions and effectiveness.

Contact Danny Bivens, P.O. Box 12397, Austin, TX 78711-2397 or (512) 936-7500 or 1-(877)-839-0363 for further information.

TRD-201005587

Sheri Givens

Public Counsel

Office of Public Utility Counsel

Filed: September 28, 2010

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 17, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38690 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of Glenn Heights, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38690.

TRD-201005580

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 24, 2010

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 23, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38715 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Lake Dallas and Midlothian, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38715.

TRD-201005583

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 24, 2010

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 27, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38733 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the municipality of Stafford, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38733.

TRD-201005593

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 28, 2010

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 23, 2010, Talk America, Inc. d/b/a Cavalier Telephone filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60118. Applicant seeks approval to reflect a change in ownership/control.

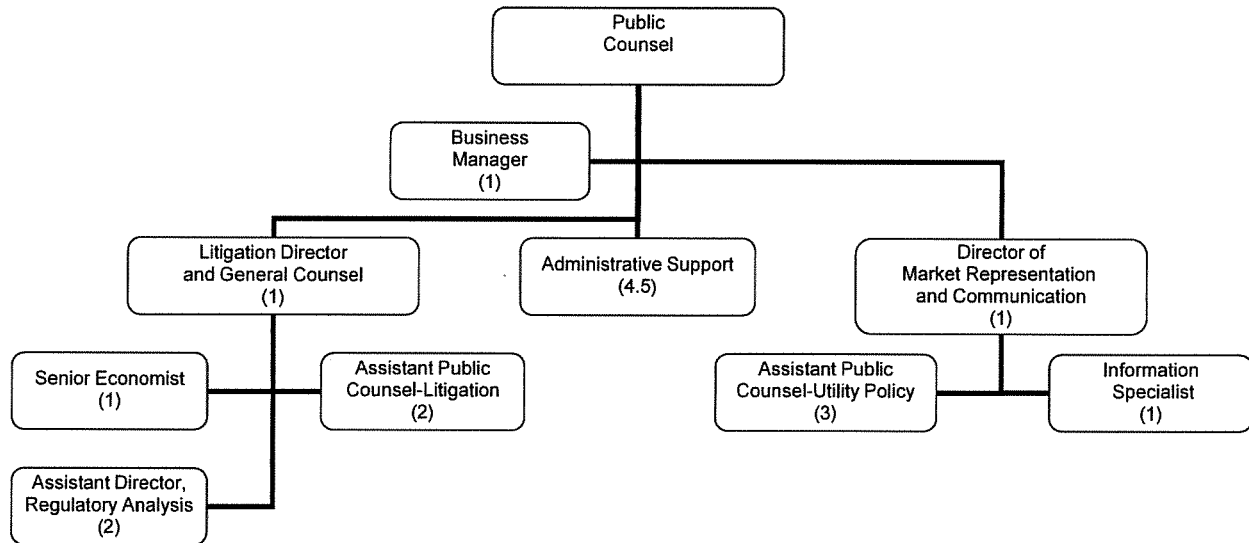
Attachment D

OPUC Outreach Events for Dec. 2009 – Dec. 2010

12/16/09	Houston	Town Hall Meeting
12/16/09	Houston	OPUC Annual Meeting
1/26/10	Jacksonville	Community Outreach
2/16/10	Houston	Community Outreach w/ PUC
2/18/10	Houston	Senior Citizen Outreach
2/19/10	Round Rock	Senior Citizen Outreach w/ PUC
2/21/10	Dallas-Oak Cliff	Smart Meter Outreach
3/6/10	Grand Prairie	Smart Meter Outreach
3/10/10	Corsicana	Community Outreach
3/12/10	Houston	Senior Citizen Outreach w/ PUC
4/6/10	Corpus Christi	Senior Citizen Outreach w/ PUC
4/22/10	Corpus Christi	Community Outreach
5/6/10	Pflugerville	Community Outreach
5/22/10	Edinburg	Community Outreach
6/10/10	Temple	Community Outreach
6/23/10	Hutto	Community Outreach w/ PUC
7/26/10	Waco	Community Outreach
8/4/10	Dallas	Community Outreach
10/14/10	Houston-Bellaire	Community Outreach
11/8/10	Houston-Galleria	Community Outreach
11/12/10	Killeen	OPUC Annual Meeting
12/09/10	Denison	Community Outreach

Attachment E

OPUC Organizational Chart



Attachment F

Alternative Ratemaking

Background and Overview

The traditional ratemaking paradigm sets a utility's rates such that the utility can cover its test year reasonable and necessary costs of serving customers and earn a return on its used and useful rate base. As part of the transition to competition, utilities were required to unbundle its generation and electric delivery functions. The amount of rate base upon which the transmission and distribution utility can earn a return is greatly diminished when generation assets are removed from rate base. In addition, current economic conditions have also affected the amount of return a utility earns; fluctuations in the consumption of electricity and associated revenues, as well as costs incurred in the provision of service, have caused utilities to seek a consistent revenue flow that is responsive to incurred costs.

All of these factors have contributed to the utilities' vigorous pursuit of the following: (1) alternative ratemaking mechanisms; (2) single issue ratemaking recovery resulting in multiple charges on bills; and (3) increases to the fixed customer charge.

Alternative Ratemaking

Recent PUC rulemakings highlight the tension between traditional ratemaking and the competitive market. The traditional ratemaking paradigm places the risk of fluctuations in electricity sales and the cost of providing service on the utility; in turn, the utility is allowed to earn a return commensurate with this risk. As discussed in Chapter 3D of this report, the current economic environment is one of weak load growth and increased costs. Utilities have responded to these unfavorable conditions by supporting alternative rate designs which recover a subset of costs outside of base rates. These mechanisms allow the utility to recover cost increases more quickly and completely and without the full review of costs and revenues that is part of a traditional rate case.¹

A portion of a utility's business risk is shifted to ratepayers and the utility's incentive to constrain costs is diminished as a result. In this environment it becomes increasingly important to explore a new approach to ratemaking that supports the financial health of utilities and ensures cost-effective investment in infrastructure, yet also provides incentives for a utility to constrain costs for ratepayers' benefit.

Under traditional ratemaking authorized by the Public Utility Regulatory Act (PURA), an electric utility may not adjust its rates outside of a full, traditional rate proceeding to account for a discrete set of costs. Instead, PURA reflects the traditional prohibition against what is referred to as "piecemeal ratemaking." PURA Section 36.051 requires the Commission, in order to set an electric utility's rates, to "establish the utility's overall revenues" at an amount that will allow the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public and reflect its reasonable and necessary operating expenses. This comprehensive review of a utility's costs allows rates to be set based on *all* costs, both

increased and decreased costs. If the utility proposes a “major change” in its rates (an increase in aggregate utility revenues of more than 2.5 percent) the Commission must hold a contested case hearing.² Further, unless specifically excepted, PURA Section 36.201 prohibits the Commission from establishing a rate or tariff that authorizes an electric utility to automatically adjust and pass through to the utility’s customers a change in particular costs of the utility.

In addition to the traditional regulatory framework, PURA does provide some exceptions for recovery of costs outside the context of a general rate case. For example:

- PURA §35.004(d) authorizes the Commission to periodically adjust wholesale transmission rates and a transmission costs recovery factor in distribution rates, subject to procedural requirements.
- PURA §35.035(c) authorizes the Commission to order an adjustment in utility rates when it approves a transfer of assets from an electric utility to an affiliated exempt wholesale generator or power marketer.
- PURA §36.202 authorizes the Commission to order the adjustment of rates based upon certain changes in the utility’s tax liability.
- PURA §36.203 authorizes the Commission to adjust a utility’s fuel factor subject to a fuel costs reconciliation proceeding.
- PURA §§36.204 – 36.207 authorize the Commission to provide for utility rate adjustments to provide for timely recovery of reasonable costs of conservation, load management, and purchased power.
- PURA §39.205 also authorizes the Commission to adopt rules that provide for the collection of nuclear decommissioning funds as a separate, non-bypassable charge and to ensure that the money collected from customers for this purpose is prudently collected, managed, and spent for its intended purpose.

OPUC Position

Utilities’ requests for “alternative ratemaking” is symptomatic of bigger challenges and perhaps some unintended consequences of electric industry restructuring that have impacted ratepayers, utilities, REPs, and other industry stakeholders. PURA has certainly evolved over the last 35 years, and its contours have been shaped by the Texas Legislature over that time.

Until recently, PURA applied to all fully regulated bundled electric utilities. This paradigm, where a utility’s bundled rates were set pursuant to PURA Chapter 36, has changed over the last decade. Legislation passed in 1999 (Senate Bill 7) restructured the electric market in the ERCOT portion of the state. In particular, ERCOT utilities were ordered to unbundle their transmission, generation and retail sales functions.³ As a result, the Commission has rate setting authority only over transmission and distribution providers (TDSPs) in ERCOT. ERCOT generation and retail sales are for the most part unregulated entities.

Restructuring has been nothing short of a paradigm shift, and OPUC notes just a few of the resultant challenges of the restructured environment:

- TDSPs' margins no longer include bundled margins from generation and retail sales.
- TDSPs' customer growth has declined from its historical 2 - 3 percent growth per year under the old paradigm.
- Utilities are required to provide quality infrastructure and reliable service, both which require significant capital investment, and operations and maintenance expense.
- Mechanisms are currently in place to expedite recovery of costs associated with wholesale electric transmission systems (interim transmission cost of service, TCOS, and transmission cost recovery factor, TCRF), but no similar mechanisms exist for the distribution infrastructure facilities of TDSPs.
- Because TDSPs and the remaining bundled utilities are the only fully regulated entities remaining in the new paradigm, every new legislative or Commission initiative is implemented within this construct. For example, TDSPs are required to fund and maintain energy efficiency programs and advanced metering systems, among others.
- While the Commission provides cost recovery for the TDSPs to implement these mandates to mitigate their risk, the risk is shifted to customers by the resultant surcharges and other types of fees that ultimately cascade or "pancake" onto ratepayers' bills.
- It is also appropriate to question what costs should be borne by ratepayers and by the regulated TDSPs under this new regime.
- The shift in paradigm also implicates the allocation of costs and its attendant impact on residential and small commercial customers.

While OPUC acknowledges the challenges facing Texas utilities, alternative ratemaking proposals should not result in system costs being disproportionately paid for by residential customers. Recent proposals would have shifted new cost recovery (for example, electric vehicle costs) to distribution customers (i.e., mainly residential and small business customers). Furthermore, requests to streamline ratemaking may result in myriad surcharges that appear on customer bills, making consumers' electric bills look like long-distance bills of the past—something the average customer is confused by and dislikes.

¹ See, for example: PUC Docket No. 37909, *Rulemaking Proceeding to Amend PUC Subst. Rule §25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)* and PUC Docket No. 38298, *Rulemaking Related to Recovery by Electric Utilities of Distribution Costs*.

² PURA §§ 36.101 and 36.105(b).

³ ERCOT electricity providers generate 85% of the electricity produced in Texas. El Paso, SPS, SWEPCO, and Entergy, non-ERCOT utilities, remain bundled and fully regulated by the commission.

Attachment G

Line-Item Surcharges and Riders

Background and Overview

The traditional ratemaking paradigm sets a utility's rates such that the utility can cover its test year reasonable and necessary costs of serving customers and earn a return on its used and useful rate base. As part of the transition to competition, utilities were required to unbundle its generation and electric delivery functions. The amount of rate base upon which the transmission and distribution utility can earn a return is greatly diminished when generation assets are removed from rate base. In addition, current economic conditions have also affected the amount of return a utility earns; fluctuations in the consumption of electricity and associated revenues, as well as costs incurred in the provision of service, have caused utilities to seek a consistent revenue flow that is responsive to incurred costs.

All of these factors have contributed to the utilities' vigorous pursuit of the following: (1) alternative ratemaking mechanisms; (2) single issue ratemaking recovery resulting in multiple charges on bills; and (3) increases to the fixed customer charge.

Line-Item Surcharges and Riders

Although surcharges are not a new issue, the recent trend in rates has been to take more and more costs out of base rates and place them in line-item surcharges. For example, consumers may pay for fuel costs, advanced metering costs, competition transition costs, hurricane restoration costs, and energy efficiency costs separately. These riders are collected in addition to base rates. Base rate cases filed in the past year have included requests for a host of new riders, including those intended to cover costs related to renewable energy credits, purchased power, storm hardening, and vegetation management.^{1,2} Additionally, CenterPoint requested a rider that would recover the difference between the company's approved annual revenue requirement and actual revenue from various sources.³ As costs are pulled out of base rates and recovered through riders, customers see a thick pancake of charges on top of base rates. The traditional base rate case and the protections it provides consumers has increasingly less meaning in a ratemaking environment that includes a wide variety of riders.

OPUC Position

Recovery of more and more costs outside of base rates denies consumers the benefits of setting rates on the basis of the utility's overall cost of providing service. If utilities are allowed to seek recovery for costs that have increased without also making an adjustment for any costs that have decreased, a consumer's overall bill can be higher than it should be. Furthermore, consumers prefer to have an all-in amount reflected on their bill without a myriad of confusing surcharges and line items appearing on the bill.

¹ PUC Docket No. 37744, *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*.
² PUC Docket No. 38339, *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*.
³ *Ibid*, Direct Testimony of Paul D. Gastineau at 5.

Attachment H

Customer Charges Proposals to Increase the Fixed Portion of the Bill

Background and Overview

The traditional ratemaking paradigm sets a utility's rates such that the utility can cover its test year reasonable and necessary costs of serving customers and earn a return on its used and useful rate base. As part of the transition to competition, utilities were required to unbundle its generation and electric delivery functions. The amount of rate base upon which the transmission and distribution utility can earn a return is greatly diminished when generation assets are removed from rate base. In addition, current economic conditions have also affected the amount of return a utility earns; fluctuations in the consumption of electricity and associated revenues, as well as costs incurred in the provision of service, have caused utilities to seek a consistent revenue flow that is responsive to incurred costs.

All of these factors have contributed to the utilities' vigorous pursuit of the following: (1) alternative ratemaking mechanisms; (2) single issue ratemaking recovery resulting in multiple charges on bills; and (3) increases to the fixed customer charge.

Customer Charges

Recent rate-filing packages have proposed large increases in fixed customer charges. Utilities support such charges as a way to provide more predictable and stable revenue, and claim that a higher customer charge benefits customers because it limits the swings in billable charges that occur with weather.¹ To this end, TNMP requested to recover 50 percent of residential and small commercial class revenues through a fixed charge. This results in a 454 percent increase in the customer charge for residential customers.² Likewise, CenterPoint requested an increase in the residential customer charge of 390 percent.³

Following conventional ratemaking principles, the Commission has traditionally based the customer charge on the revenue requirement necessary to cover billing, metering, and customer service costs that vary by the number of customers in a given class.⁴ The Commission has limited the TDU customer charge to recovery of only customer service and meter-related costs, and has not calculated the customer service charge on the basis of including fixed costs.

OPUC Position

OPUC agrees that large customer charges do not benefit customers. Such charges are regressive in nature, since low-use consumers pay a significantly higher rate per kilowatt-hour than high-use consumers. Additionally, high customer charges distort economic incentives. When most of a customer's bill consists of a fixed charge, changes in consumption do little to change the total bill amount. Because the bill savings from conservation are diminished, over-

consumption of energy results. In providing the utility with revenue stability, increased fixed charges shift business risk from a utility's shareholders to its ratepayers.

Proposals to increase the customer charge are inconsistent with the desire of the Legislature to promote and deploy advanced meters. Moving away from usage-based pricing is at odds with its investment in AMS meters, since the pricing philosophy would render time of use information useless for approximately a third of the residential customer's monthly bill—the TDU charges portion.

Increased customer charges mask pricing signals and discourage energy efficiency. By paying a higher fixed customer charge in lieu of a higher variable charge, customers will not realize as great a savings benefit from undertaking energy efficiency measures, because energy efficiency measures reduce only their volumetric cost, not the fixed customer charge in their bills. Therefore, a higher customer charge works against state efforts and the millions of dollars of retail customers' funds spent on energy efficiency programs designed to incentivize retail customers to reduce their electricity consumption. Indeed, the higher charge could promote wasteful energy consumption. On the other hand, minimizing the customer charge provides the retail customer more ability to control his or her bill on the basis of usage, consistent with state energy efficiency and conservation policies.

While the customer charge portion of an electric bill is an inescapable portion for all residential customers, the impact of large increases in the fixed customer charge will inflict the greatest burden upon low usage residential retail customers, many of whom are low-income customers. The low-usage customers probably do not use, and possibly cannot afford air conditioning, or they use it sparingly.

Proposals to significantly raise the customer charge are the first step to “decouple” utility recovery of revenue from the level of electric transmission and distribution service it provides. It is intended to maintain a level of revenue recovery for the utility despite lower sales of electricity to retail customers in an environment where usage per customer and customer growth are slowing or decreasing due to energy efficiency programs and the poor national economy. However, these decoupling proposals are contrary to PURA Section 36.051 and undermine the positive incentive incorporated in PURA for utilities to control costs in order to have the opportunity to earn the authorized rate of return. Additionally, this decoupling inappropriately shifts the burden of a utility's inherent business risks onto retail customers.

¹ PUC Docket No. 38480, *Application of Texas-New Mexico Power Company for Authority to Change Rates*, Direct Testimony and Exhibits of Ronald N. Darnell at 16.

² *Ibid*, Schedule IV at 13.

³ PUC Docket No. 38339, *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, CEHE's alternative residential class rate design proposal is to increase the monthly \$1.68 customer service charge component to \$18.12 and decrease the volumetric distribution charge (\$/kWh). With the meter charge, the proposed alternative residential customer charge would be \$22.11, in contrast to the \$5.67 charge calculated according to conventional ratemaking principles followed by the Commission.

⁴ *Generic Issues Associated With Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 22344, Order No. 40, at 5-6 (Nov.22, 2000).

Attachment I

Prepaid Electricity

Background and Overview

In October 2010, the Commission opened a rulemaking project to repeal the existing prepaid electric rule and to replace it with a new rule that better reflects changes in the market since 2007, specifically recognizing the deployment of advanced meters and the benefits those meters can bring to consumers who opt for prepaid service.¹ Commission Staff, in the referenced Proposal for Publication, credits the new rule with better protection for customers receiving prepaid service, and perhaps the crux of that protection comes from the new rule's reliance on *actual* customer usage in contrast with REP-*estimated* consumption.

Because some REPs, under the current rule, provide prepaid service without using customer prepayment devices or systems (CPDS), these REPs do not have timely access to the actual electricity consumption of their customers. Consequently, these REPs then have to require customers to make payments based on the REPs' estimates of usage and then true up the payments when actual consumption is available. In contrast, REPs that provide prepaid service using CPDS use actual consumption and do not need to rely on estimates for the calculation of charges for service.

This practice of using estimated consumption has given REPs perhaps a bit too much discretion in determining payments, and the Commission has seen considerable customer complaints as a result. In addition, for REPs providing prepaid service without CPDS, not only are they able to base payments on estimated usage under the current rule, but they are also able to disconnect customers based on estimated consumption. The new proposed rule seeks to remedy this inequity, and OPUC filed comments and reply comments in December 2010 to ensure that customers are not only protected, but also that the rule is structured in such a way that consumers are able to receive all potential benefits from prepaid offerings. The Commission is expected to adopt a final rule in the early part of 2011.

OPUC Position

Prepaid offerings will continue to grow in importance as advanced meters and the smart grid infrastructure are deployed. While prepaid service may indeed offer benefits to many consumers, such as allowing customers to choose a product that requires no deposit or to make more frequent payments based on individual preferences, ensuring appropriate customer protections are in place is fundamental to the customer's realization of those benefits. Some of the potential benefits of prepaid offerings include, but are not limited to, an increased awareness of energy efficiency; enhanced customer consumption visibility and control; a broader diversity of billing and payment options; and the reduction and/or elimination of discretionary service fees. OPUC anticipates a variety of regulatory challenges and the need for consumer protections including the management of moratoriums with prepay; connect and reconnect policies; relevant

consumer information disclosure; concerns related to low-income/predatory practices; service availability and differentiated treatment between consumers; and cross-subsidization issues.

¹ PUC Project No. 38675, *Amendments to Customer Protection Rules Relating to Prepaid Service*, Proposal for Publication (October 15, 2010).

Attachment J

Electric Vehicles

Background and Overview

While widespread electric vehicle (EV) use figures prominently in the national effort to reduce greenhouse gas emissions and promote energy independence, it also represents a clear business opportunity to expand electric demand, and it poses an attractive concept to utilities in a time when the general push is toward reduced electric demand and energy efficiency. The two most widely discussed entrants into the EV market are the Nissan Leaf and the Chevrolet Volt.

In early 2010, the Commission opened a project¹ to explore the issues created by the impending introduction of EVs into the consumer marketplace. The Commission held a public workshop in May 2010 to foster discussion concerning electric vehicles and the development of standards for their use, as well as the reliability impacts to the utilities and the electric infrastructure and environment. As of yet, no formal rulemakings have resulted from the workshop or the project.

OPUC Position

Introduction of EVs poses some significant unresolved challenges and issues. Texas public policy promotes the use of renewable energy resources and encourages energy efficiency to reduce energy consumption; however, the potential implementation of policies subsidizing the use of EVs may have the opposite effect and actually increase the consumption of electricity. Determining what additional infrastructure is required to accommodate the increased load imposed by EVs, both at the generation and at the distribution level, is another important issue.

Other unresolved EV issues include: ownership and funding of any publicly available charging stations; potential rate shock, especially for ratepayers with gas heat/hot water heaters/gas dryers; net-metering, required for two-way communication and the possible use of EVs as storage for the utility; and consumer education about all the constraints and advantages of EVs.

Residential and small commercial consumers may bear the brunt of the costs inherent in the infrastructure upgrades that result from the introduction of a significant number of EVs onto the electric grid. OPUC believes costs for infrastructure improvements should not be borne primarily by residential and small commercial ratepayers and additional funding sources should be considered, especially contribution by the EV suppliers and marketers. Additionally, because there are fundamental, unresolved issues related to standards and communications protocols, charging and timing of charging, ownership and use of charging stations and the possible use of plugged-in-vehicles providing power back to the grid, OPUC plans to maintain an active role in any possible rulemakings to protect the interests of its constituents.

¹ PUC Project No. 37953, *Investigation of Issues Relating to Electric Vehicles* (February 8, 2010).

Attachment K

Switch Hold

Background and Overview

As already noted in Chapter 2 of this report, the Commission initiated PUC Project No. 36131 in September 2008.¹ The project was essentially inactive until August 2009, when the Commission convened a series of stakeholder workshops and meetings followed by a request for comments in September 2009 to receive initial stakeholder input before eventually publishing its proposed rule in April 2010. OPUC and other consumer advocacy entities actively participated in each workshop and meeting, and filed comments and reply comments in May 2010. The Commission followed with another series of stakeholder meetings to address issues in the proposed rule and ultimately approved a final rule in September 2010.

The stated purpose of the Project, as noted in a letter to Houston City Council Member Noriega in July 2009 from PUC Chairman Smitherman, was to examine a disconnect moratorium on a permanent basis.² OPUC proceeded to participate in the aforementioned workshops and stakeholder meetings believing the rulemaking would address the fundamental issue of bill payment assistance and those issues customers face during the summer, when their bills increase along with the temperature. However, as the Project developed, though improvements were proposed and ultimately made regarding the availability of balanced/levelized billing and deferred payment plans, it became apparent that the direction of the rulemaking had turned to focus more on the retail electric provider's (REP's) uncollectible charges ("bad debt") and a mechanism ("switch hold") that prohibits customers from switching away from their current REP if that customer owes their REP an outstanding balance.

OPUC, several legislators and consumer groups voiced their opposition to the switch hold provision at the various stakeholder meetings and in written comments.³ A synopsis of the major points in opposition to the switch hold provisions in the proposed rule included, but were not limited to, the following:

- The proposed provision abridges the declared statutory right of each Texas retail electric customer to choice of his or her service provider.⁴ It is fundamentally against the intent and policy purposes of the restructured Texas electric market.
- The Commission does not have the statutory authority to implement a switch hold to bind a customer to a REP by preventing a switch for any reason.⁵ PURA Chapter 14 does not provide the Commission authority to prevent a customer from switching providers, and PURA Chapters 17 and 39 expressly declare that each customer has the right to choose its retail service provider.⁶
- The switch hold provision imposes a regulatory fix for a market issue that, in a truly competitive market, should be better addressed with a market solution.

- PURA already provides REPs with a basis for refusing customer service based on electric bill payment history. PURA Section 17.008(d) provides that a REP may not deny electric service on the basis of the applicant's credit history, credit score, or utility payment data but may use the applicant's electric bill payment history (emphasis added).
- To date, the REPs have provided no supporting documentation that ensures that the switch hold will, in fact, reduce the REP's bad debt or that the reduction in bad debt will provide any concurrent reduction in rates for end-use customers.

OPUC Position

OPUC believes the switch hold provision is a true game-changer that may drastically change the customer experience in ERCOT. Once the new provision goes into effect in June 2011, if a customer does not pay his/her bill, the customer will be disconnected and then denied from choosing a new REP until the bill with the current REP is paid in full. While this may seem reasonable to some at first glance, OPUC is concerned that customers may be disconnected for extended periods of time. With so many customers on fixed or low-incomes, the ability to maintain electric service may be a bigger challenge than ever.

For all of the aforementioned reasons, OPUC recommends the Legislature take serious note of this critical consumer issue and prohibit REPs from retaining customers who would like to choose a new provider.

¹ PUC Project No. 36131, *Rulemaking Relating to the Disconnection of Service and Deferred Payment Plans*.

² PUC Project No. 36131, Chairman Smitherman's Letter to Council Member Noriega (July 14, 2009).

³ PUC Project No. 36131, See comments filed by OPUC, legislators and consumer groups (October 26, 2009; March 25, 2010; May 03, 2010; May 06, 2010; May 21, 2010; and July 07, 2010).

⁴ PURA §39.102(a).

⁵ PUC Project No. 37291, *Rulemaking Relating to Meter Tampering and Disconnection and Reconnection of Service for Customers with Advanced Meters*. Comments Regarding Switch Blocking from the Office of State Representative Sylvester Turner and the OPUC (Jan. 22, 2009).

⁶ PURA §§17.004(a)(2), 39.001, 39.101(b), and 39.102.

Attachment L

Acronyms

ACP	Alternative Compliance Payment
ADAD	Automatic Dial Announcing Devices
AEP	American Electric Power
AMS	Advanced Metering Systems
CCN	Certificate of Convenience And Necessity
COPS	Commercial Operations Subcommittee
CREZ	Competitive Renewable Energy Zone
DCRF	Distribution Cost Recovery Factor
DSP	Distribution Service Provider
EECRF	Energy Efficiency Cost Recovery Factor
EESPs	Energy Efficiency Service Providers
EPAct	Energy Policy Act of 2005
ERCOT	Electric Reliability Council of Texas
ETI	Entergy Texas, Inc.
EV	Electric Vehicles
FCC	Federal Communications Commission
FERC	Federal Energy Regulatory Commission
kWh	Kilowatt Hour
LRAM	Lost Revenue Adjustment Mechanisms
MW	Megawatts
NASUCA	National Association of State Utility Consumer Advocates
NATF	Nodal Advisory Task Force
NERC	North American Reliability Corporation
NPRRs	Nodal Protocol Revision Requests
OPUC	Office of Public Utility Counsel
PRRs	Protocol Revision Requests
PRS	Protocol Revisions Subcommittee
PUC	Public Utility Commission
PURA	Public Utility Regulatory Act
REPs	Retail Electric Providers
RMS	Retail Market Subcommittee
ROS	Reliability and Operations Subcommittee
RRC	Texas Railroad Commission
SBF	System Benefit Fund
SPS	Southwestern Public Service Company
STAP	Specialized Telecommunications Assistance Program
SWEPCO	Southwestern Electric Power Company
TAC	Technical Advisory Committee
TCEQ	Texas Commission on Environmental Quality
TCOS	Transmission Cost of Service
TCRF	Transmission Cost Recovery Factor

TDSPs	Transmission and Distribution Service Providers
Texas RE	Texas Reliability Entity
Texas SET	Texas Standard Electronic Transaction
THCUSP	Texas High Cost Universal Service Plan
TNMP	Texas New Mexico Power Company
TSP	Transmission Service Provider
USF	Universal Service Fund
WMS	Wholesale Market Subcommittee